

TO
THE RIGHT HONOURABLE
HENRY ADDINGTON,
S P E A K E R
OF THE HOUSE OF COMMONS,
THE FOLLOWING COLLECTION OF
P R E C E D E N T S,

IS,
WITH THE GREATEST RESPECT,
INSCRIBED,

BY HIS MOST FAITHFUL FRIEND
AND OBEDIENT HUMBLE SERVANT,

JOHN HATSELL.

P R E F A C E

T O T H E

F O U R T H V O L U M E.

*T*HE only parts of this Work, which remain to be offered to the Public, are included under the following Titles, Conference, and Impeachment.

The Editor is aware, that, on the latter of these heads, he has, in some instances, been induced to deliver his opinion on questions of Parliamentary Law, more decidedly, than perhaps it was prudent for him to have done. He has however always endeavoured to express that opinion with diffidence; and, whenever he has presumed to form any conclusions, of what appeared to him to be the Law of Parliament, he has, at the same time, stated at length the particular Cases and Precedents, from whence those conclusions have been drawn.

It has sometimes been advanced, that this expression of "Parliamentary Law," or "The Law of Parliament," is inaccurate; for that there is no such particular Law, distinct from the Common Law of the Land. No such distinction has ever

been attempted to be made; but, from the earliest ages of our history to the present moment, it has been uniformly asserted, by those best acquainted with these subjects, "That the judicial proceedings in Parliament are to be regulated, not by what are commonly and technically called, the Rules of the Common Law, but by their own customs; and the ancient practice of the two Houses of Parliament," and therefore, "That the Law of Parliament forms part of the Common Law of the Land."

Above four hundred years ago, the Lords claimed it to be their acknowledged franchise, "That matters moved in Parliament shall be managed, adjudged, and discussed, by the course of Parliament; and in no sort by the Law Civil, or by the Common Law of the Land, used in other lower courts of this kingdom."

Sir Edward Coke says, "As every court of justice hath laws and customs for its direction, some by the Common Law, some by the Civil and Canon Law, so the High Court of Parliament suis propriis legibus et consuetudinibus consistit. It is by the Lex et consuetudo Parliamenti, that all weighty matters concerning the Peers of the Realm, or Commons in Parliament assembled, ought to be discussed, adjudged, and determined." Indeed all the wisest statesmen and greatest lawyers, through a long succession, from Sir Edward Coke and Mr. Selden, to the Earl of Hardwicke, have, whenever an opportunity has been offered to them, constantly repeated this doctrine. Nor is the authority of the Judges in Westminster Hall wanting in its support: it will be found, in the Records of Parliament, that these venerable Magistrates, when application has been made to them for their opinion on questions, relating to judicial proceedings in Parliament, have

modestly

*modestly “ desired to be excused from delivering any such opinion ;
 “ for that of those subjects the Lords only are the judges.”
 And if, at any time, some of them have presumed to disregard,
 these rules, and to declare the Law of Parliament, they have,
 been told, “ That such judgment belongeth only to the Lords ;
 “ and that it is the franchise and liberty of the Lords, by the
 “ antient custom of the Parliament, to be the sole Judges in such
 “ cases.”*

*The great variety of subjects, which come before Parliament
 for their consideration, has, since the publication of the former
 Volumes, suggested the insertion of some Titles, and made it
 necessary to refer to several Precedents, which had not before
 been the objects of particular attention—it has therefore been
 thought proper, together with this Volume, to re-print the three
 former with those additions. It has been already observed, that,
 in forming an opinion of this Work, it ought to be considered as a
 sort of Index to the Journals at large ; intended to assist those
 Members of Parliament or other persons, who may be desirous of
 consulting the original Records on these subjects. Whether it will
 be found to answer a still more important purpose, must be left to
 the judgment of the Reader ; perhaps it may not be too presumptu-
 tuous to hope, that these researches, and the precedents here brought
 forward, may, in some degree, tend to give additional strength
 and support to those maxims and principles, which are the founda-
 tion of the British Government—and which have hitherto main-
 tained the balance of this justly admired Constitution, as well
 against the weight of an undue exercise of the Prerogative, or of
 the influence of the Crown, as against the no less dangerous, though
 more*

more plausible, attempts to extend the powers of the People, beyond what were claimed, at the memorable Æra of the Revolution, to be, "The true, antient, and indubitable rights and liberties of the subjects of this kingdom," and which, by the Bill of Rights, were "declared, enacted, and established, to stand, remain, and be, "the law of the realm for ever."

COTTON-GARDEN,
October 20th, 1796.

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PRECEDENTS OF PROCEEDINGS

IN THE

HOUSE OF COMMONS.

CONFERENCES.

- I. *By whom demanded, and on what Account.*
- II. *Number of Managers; Time, and Place.*
- III. *Managers how named.*
- IV. *Cause of desiring, to be expressed.*
- V. *Form of holding.*
- VI. *Rules of Speaking at.*
- VII. *Free Conference.*



CONFERENCE.

- I. *By whom demanded, and on what Account.*

I. **O**N the 29th of November, 1554, Message from the Lords by the Master of the Rolls and the Solicitor General, that the Lords had appointed the Lord Chancellor, four Earls, four Bishops, and four Barons, to confer with a number of this House; who immediately were sent unto them. The subject of this conference was, to devise a Supplication * to King Philip

* See, in the Parliamentary History, Vol. III. p. 315, Cardinal Pole's Speech on delivering his Legation from the Pope, the form of the Supplication, and the Legate's Abso-

lution. Whilst the Cardinal, by the Pope's authority, pronounced the Absolution, "all the Parliament, both Lords and Commons, were on their knees."

and Queen Mary, for again uniting this realm and its dominions to the Church of Rome, by the means of Cardinal Pole.

2. On the 4th of December, 1554, the Attorney and Solicitor General * brought to the House of Commons a list of divers names of the Upper House, requiring a number of this House to confer with them for Parliament matters; which immediately were named; ~~and~~ the whole Council of this House, and twenty-one Knights and Burgessees, and sent up to the Lords. This conference was probably on the same subject, as that, which appears from the Lords Journal, to have been again held on the 6th of December, which was, “for the drawing of a Bill touching the Repeal of certain Statutes †.”

3. On the 10th of May, 1571, a Message from the Lords, to desire that a number of this House may be presently sent to confer with their Lordships, touching the Bill of Attainders ‡, and the Bill against Bulls; which is immediately complied with.

* It appears from this, and the foregoing case, that at this time, the Master of the Rolls, and the Attorney and Solicitor General, attended the House of Lords, as the Masters in Chancery do now, and brought messages to the House of Commons.—See what is said upon this subject in the 2d vol. of this work, p. 26, 27, and 28.

† It is said, in the Parliamentary History, 3d vol. p. 325, that this Conference was carried on to the 20th December, when a Bill was read 1^o in the House of Lords, “for the repeal of certain Acts made against the supremacy of the See of Rome,” and that this Bill was read 2^o on *Christmas Day*, “a day,” it is added, “on which we have never found a Parliament sitting before;” but it may be supposed, that they thought “they could offer no higher oblation to Christ on that festival, than to repeal those

“laws which had shut his Vicar out of the kingdom.” Unfortunately for this ingenious supposition, it is founded on a mistake; for the Lords did not sit on Christmas Day, which fell this year on a Tuesday; but the compilers of the Parliamentary History were led into this error by a mistake in the written Journal, in calling *Wednesday* (the day on which this Bill was read 2^o) the 25th, whereas it was really the 26th. This mistake is corrected in the printed Journal of the Lords.—Both Houses adjourned over Christmas Day.

‡ The Bill of Attainders had come from the Lords, and was then depending in the House of Commons; the Bill against Bulls began in the Lords, but had been agreed to by the Commons with amendments, and sent back on the 9th of May.

4. On the 23d, 24th, and 25th of May, 1571, there are several Conferences desired by the Lords, upon Bills then depending.

5. On the 12th of March, 1575, a message is brought from the Lords, to desire that certain Members might be authorized to shew to their Lordships the reasons, which did move this House to deal so hardly in Lord Stourton's Bill.—This message was not well liked of, but thought prejudicial to the liberties of this House; whereupon it was resolved, That no such reason shall be rendered, nor any of this House be appointed unto any such commission.—On the 13th of March, the Lords send another message for a Conference touching the Bill of the Lord Stourton, "which, their Lordships" hear, hath had offers of provisos, or some other things, to the "stay of the proceeding of the said Bill." After debate, the Lords Messengers were called in, and told for answer, "That by the resolution of this House, according to its ancient liberties and privileges, Conference is to be required by that Court, which, at the time of the Conference demanded, shall be possessed of the Bill, and not of any other Court; and further, that this House, being now possessed of the Bill, and minding to add amendments, will (if they see cause and think meet) pray Conference with their Lordships themselves, otherwise not." The Bill is passed the same day, with amendments, and sent back to the Lords; and then, the Lords again desiring a Conference upon this Bill, this Conference is agreed to, and Members appointed to manage it.—On the 14th of March, the Lords complain of the unkindness of the Commons, in relation to this proceeding; to which charge the managers are ordered to declare, "That this House hath not done, doth not, and will not give their Lordships any such occasion *."

B 2

6. On

* This Bill was for the restitution in blood of John, the eldest son of Charles Lord Stourton. The father had, with the assistance of his servants, committed a murder on one Har-

gill and his son; for which, he was hanged at Salisbury, the 16th of March, 1557 (it is said) with an halter of silk, in respect of his quality.—Collins's Peerage, Vol. VI. p. 545. It

6. On the 27th of February, 1609, a Conference is desired with the Lords, complaining of a book, published by one Dr. Cowell, called *The Interpreter*, and desiring the Lords to join in examining, and censuring, and punishing the party *.—See the 2d of March, and in the Lords Journal the 2d, 3d, 5th, and 8th of March.

7. On the 13th of April, 1614, the Lords having sent down a Bill touching the Palsgrave, and the Commons being desirous to amend the Bill, desire a Conference with the Lords upon this proposed amendment : which is holden on the 14th †.

8. The Commons having pronounced a sentence against Floyd, for contumelious expressions against the Palsgrave, and his wife, the Lords, in order not to suffer any thing to pass which might prejudice their right in point of judicature, on the 5th of May, 1621, desire a Conference on this subject ‡.

9. When the Commons, on the 3d of April, 1628, had come to several resolutions §, which were afterwards the foundation of the

It appears from the Lords message. (which is entered in the Commons Journal of the 12th March) that this Bill, being for restitution in blood, had been signed by Queen Elizabeth.

* See in the Biographia Britannica, an account of this Dr. Cowell, and of the work, for which he was censured : He was a Civilian, and patronised by Archbishop Bancroft—The contest at this time running very high, between the Civilians and the Common Lawyers, Sir Edward Coke, then Chief Justice of the Common Pleas, who valued himself as the great advocate for his profession, and had much interest in the House of Commons, stirred up this prosecution against Dr. Cowell.

† This proceeding was informal ; the Commons should have amended the Bill with-

out Conference ; if the Lords had disagreed to their amendments, then the Lords should have demanded the Conference, to assign the reasons for their disagreement.

‡ See this case of Floyd more at length in Vol. III. of this work, p. 46.—See also the 7th and 8th of May, 1621, and subsequent days, in the Journals of both Houses, for the proceedings at the several Conferences held touching this matter.

§ These Resolutions are as follow :

1st, Resolved, upon question, That no free man ought to be committed, or detained in prison, or otherwise restrained, by the command of the King, or the Privy Council, or any other, unless some cause of the commitment, detainer, or restraint, he expressed, for which,

the Petition of Right, they resolve, on the 4th, to desire a Conference with the Lords, concerning certain ancient and fundamental liberties of the subject*.

10. On the 1st of February, 1661, the Lords, at a Conference, taking notice that several persons, excepted in the Act of Oblivion, were omitted in the Bill for execution of the persons attainted of High Treason, which had passed the Commons, and been sent to the Lords, say, That though the Lords could have inserted their names by way of amendment; yet, in civility, and for keeping a good correspondence with the Commons, the Lords desire to know the reasons which induced this House to omit the said persons.—The House of Commons, upon the report of this Conference, immediately resolve, That another Conference be desired with the Lords upon the subject-matter of this last Conference; and at that Confer-

which, by law, he ought to be committed, detained, or restrained:—without one negative.

2dly, Resolved, upon question, That the writ of Habeas Corpus may not be denied, but ought to be granted to every man that is committed, or detained in prison, or otherwise restrained, though it be by the command of the King, the Privy Council, or any other, he praying the same:—without one negative.

3dly, Resolved, upon question, That if a free man be committed, or detained in prison, or otherwise restrained, by the command of the King, the Privy Council, or any other, no cause of such commitment, detainer, or restraint, being expressed, for which by law he ought to be committed, detained, or restrained, and the same be returned upon an Habeas Corpus granted for the said party, that then he ought to be delivered, or bailed:—without one negative.

4thly, Resolved, upon question, That the ancient and undoubted right of every free man is, that he hath a full and absolute pro-

perty in his goods and estate; and that no tax, tallage, loan, benevolence, or other like charge, ought to be commanded or levied by the King, or any of his Ministers, without common assent by act of Parliament:—agreed, nemine contradicente.

* See in the Lords and Commons Journals, particularly in the Lords Journal of the 9th of April and 23d of May, 1628, the further proceedings and Conferences upon this subject, with the arguments at length touching the saving of the King's prerogative, which the Lords and King wished to insert, but which the Commons prudently and firmly rejected.—All these arguments are very summarily reported in Rushworth's Collections, Vol. I. p. 527.—See also, in Hume's History of Charles I. and Charles II. what he supposes to have been urged by each party in favour of their respective opinions. The Petition of Right, with the King's answer, *Soit droit fait, come est desire*, is printed in the Statutes at Large, at the beginning of the Acts of the 3d year of Charles the 1st.

ence, that it be declared, “ That this House doth not find any precedent for giving in their reasons, in such manner as is desired, until “ there be some alterations in the Bill, that may occasion the same.”

11. On the 10th of May, 1662, the Lords having amended a Bill sent from the Commons, and the Commons having agreed to some of these amendments, and disagreed to others, the Commons send back the Bill, with this message to the Lords ; to which the Lords return for answer, “ That their Lordships observe it to be against the course of Parliament, that such transactions should be returned by “ Message,” which ought to have been by “ Conference,” in which reasons might have been given for the Commons dissent ; the Lords, in consideration thereof, have returned the Bill, as it was this day delivered at the Bar, “ to the end the due course of “ Parliament in the transacting of things of this nature may be “ observed.”—The Commons acquiesce in this proceeding, and desire a Conference accordingly.

12. On the 15th of May, 1675, the Commons send a message to the Lords, to acquaint them, “ That they have received information “ that there is an appeal brought in a cause against Mr. Onslow, a “ Member of their House, and to desire the Lords to have regard to “ the privileges of this House.” The Lords return an answer, on the 18th of May, “ That it is their right to receive and determine “ appeals from inferior courts, though a Member of either House “ be concerned ; and from this right, and the exercise thereof, their “ Lordships will not depart.” The Commons immediately desire a Conference with the Lords, upon the privileges of this House, contained in this answer of the Lords to their message. On the 21st of May, Sir Trevor Williams reports, he had desired the Conference ; to which message the Lords will return answer by messengers of their own. On the 27th, the Lords are reminded of this business ; and on the 28th of May the Lords return this answer, “ That they did
“ not

“ not agree to a Conference on the message of the 21st instant,
“ because it was desired upon the answer sent by the Lords, in the
“ case of Mr. Onslow, on the 17th instant, where the whole matter
“ concerns the judicature of the Lords, on which they can admit no
“ debate, nor grant any Conference; but this present message being
“ for a Conference concerning the privileges of their House, the
“ Lords do agree to it, provided that nothing be offered at the Con-
“ ference that may any ways concern their Lordships judicature*.”

13. On the 9th of March, 1677, a Conference is held, at the desire of the Lords, upon a Bill which had been passed by them, and returned from the Commons with several amendments and alterations, “ so many,” the Lords say, “ as to make it a new Bill.” On the 19th of March, the Commons give reasons for objecting to this uncommon proceeding of demanding a Conference upon amendments to which the Lords have not disagreed †.—The Lords refer this matter to their Committee of Privileges ‡.

* The Commons were not satisfied with this proviso, and refused to go to the Conference. Several other Conferences are afterwards held upon the subject-matter of this dispute; which, with the other differences then subsisting between the two Houses, relative to the judicature of the House of Lords, compelled the King to put an end to the session on the 9th of June.—See particularly the Commons Journal of the 28th of May and 2d of June, with respect to the regularity of the Lords inserting, in their agreement to the Conference, a limitation or proviso, of what shall or shall not be offered by the Commons at such Conference.

† The Lord Privy Seal, who managed the Conference on the 9th of March, being asked, Whether the Lords did disagree to the amendments sent up by the Commons, answered, “ I do not say, the Lords disagree; but, that “ they cannot agree to those amendments.” One of the reasons given by the Commons on

the 19th of March, is, “ That, according to
“ the ancient course and method of transactions
“ between the two Houses, when a Bill with
“ amendments is sent from either House to
“ the other, by messengers of their own, the
“ House, that sends them, gives no reasons
“ for their amendments: but the House to
“ whom it is sent, if they find cause to disagree,
“ do use to give reasons for their dissent to
“ every particular amendment; every one of
“ which is supposed to carry with it its own
“ reason, until it be objected against.”

‡ On the 20th of December, 1680, the Lords proceed with as much irregularity in sending a message, “ That they have returned a Bill, to which the Commons had made several amendments, to many of which the Lords did not agree.” Instead of this message, they should have desired a Conference, where they might have given their reasons for their disagreeing.—The Commons never take this message into consideration.

14. On the 13th of May, 1690, the Lords desire a Conference to acquaint the Commons, that they have agreed to the amendments made by the Commons to a Bill sent from the Lords*, with an amendment, and the reason for that amendment, to which amendment they desire the concurrence of the Commons.

15. On the 17th of December, 1690, the Commons having taken into consideration several amendments made by the Lords to the Mutiny Bill, agree to some, and disagree to others; and then desire a Conference with the Lords, to communicate to them, to which of the amendments the Commons have agreed or disagreed; but give no reasons at the Conference for their disagreement†. Another Conference is held the same day, at the desire of the Lords, who assign reasons for adhering to their amendments.

16. On the 6th of February, 1693, the Lords order a search to be made of what precedents there are, of messages to or from the House of Commons, for putting each other in mind of any thing delivered at a Conference, or otherwise, except Bills. The report of the precedents is made on the 7th of February; and then the Lords desire a Conference with the Commons, to remind them, that, having formerly communicated to them certain papers of information, which the Lords conceive to be of great consequence, and fit to be enquired into, they had heard nothing yet from the Commons relating to that matter.

17. On the 3d of January, 1695, a Conference is held, at the request of the Lords, to communicate to the Commons, amendments

* This Conference was unnecessary.—The more usual and proper mode of proceeding would have been, to have made this communication to the Commons by message.

† This proceeding was informal—as, when either House disagree to amendments made by

the other, it is not only usual, but it seems almost necessary, that they should assign their reasons for the disagreement, that the House, who made the amendments, may know, and weigh the grounds upon which they are objected to.

which the Lords had made to a Bill about a re-coinage of silver, that had been passed by the Commons *; which amendments, the Lords say, "they directed to be communicated at a Conference, "being willing to take that opportunity of acquainting the House of Commons, that the Lords are sensible the alterations they have made are short of what may be requisite to be done upon so nice a subject, but that whatever may prove defective, they have no doubt will be supplied by the care and prudence of the House of Commons."

18. The Commons, at a Conference on the 17th of February, 1702, used expressions, which the Lords taking into consideration on the 18th, resolved to be "highly reflecting and unparliamentary." A Committee is then appointed by the Lords to consider, "what further proceedings are fit to be had in this matter." On the 22d of February, the Lord Steward reports from this Committee, "That not finding by any precedent, that messages, delivered from one House to the other, at a Conference, have been answered otherwise than at another Conference, the Committee are of opinion, that the resolutions of the 18th instant be delivered to the Commons at a Conference." To which report, the Lords agree.—The Commons afterwards desire a free Conference upon the subject-matter of this Conference; in which they acquaint the Lords, "That the Lords delivering at a Conference their resolutions, instead of reasons, in answer to the reasons of the Commons, is not agreeable to the ancient rules and methods of Parliament, observed in Conferences between the two Houses."

* It is not usual to deliver amendments at a Conference.—The common mode of proceeding is by message. A similar proceeding by Conference is had, at the desire of the Lords, on the 15th of May, 1701, relating to a Bill for regulating the King's Bench and

Fleet Prison; at which the Lords state their reasons for the alterations they had made. The consideration of the report of this last Conference, is put off by the Commons from time to time, and at last dropt.

19. On the 7th of May, 1711, the Commons taking into consideration some amendments made by the Lords to a Bill, make amendments to one of them, and then, on the question for agreeing to the Lords with their amendment so amended, it passes in the negative. A Committee is then appointed to draw up reasons to be offered to the Lords, at a Conference, for disagreeing with this amendment, “thus amended*.” On the 11th of May, the reasons are reported, and the Conference is held on the 12th.—As soon as the Conference is reported in the House of Lords, the Lords resolve, “That they cannot but take notice of this, as unusual in the methods of proceeding on amendments between the two Houses, and therefore the Lords must necessarily desire the opinion of the Commons upon the proviso as sent down from their Lordships.” This brought on other Conferences, on the 16th, 17th, and 23d of May, till, on the 31st of May, the Commons are compelled to assign their reasons for disagreeing to the clause as it was originally sent from the Lords.

20. On the 15th of February, 1715, the Commons resolve, *Nem. Con.* to desire a Conference with the Lords†, in relation to the course of proceeding on impeachments exhibited by the Commons.

21. On the 15th of July, 1717, message from the Lords, “That the Lords had accepted, and passed, *Nem. Con.* a Bill for a General

* I have heard Mr. Onslow say, That Mr. Bromley, the Speaker, was led into this error, by the Whig party who were then in opposition, in order to expose his inability for the situation, in which he had been placed by the Tories.

† It appears from the report of the Committee, on the 16th of February, who were appointed to draw up what was proper to be offered at the Conference, that the object of this Conference was to correct a mistake the Lords had committed, in not sending down

the answers in writing to the Commons, which the impeached Lords had delivered in to the Lords, when they pleaded guilty. The Lords admitted the objection, and on the 20th of February came to a resolution, “That, for the future, all writings delivered into the House of Lords, by persons impeached by the Commons, at the time when they put in their answers or pleas, or true copies of such writings, shall be forthwith sent to the Commons.”

“Pardon.”

" Pardon." This message being objected to, a Committee is appointed to prepare reasons to be offered to the Lords upon this message; which being reported, two Conferences are held*.

22. On the 12th of July, 1721, the Lords desire a Conference with the Commons, which is agreed to; and it is to ask, on the part of the Lords, the assistance of the Commons, in order to have a state of the facts, on which the Bill for punishing the directors of the South Sea Company was grounded, more fully laid before their Lordships †.

23. On the 26th of April, 1729, a Conference is desired by the Lords, and held, for the purpose of desiring the assistance of the Commons, to lay before the Lords, a state of the matters of fact, which are suggested in a Bill for disabling Bambridge to hold the office of Warden of the Fleet, as the ground and foundation upon which the Commons proceeded to pass the Bill. On the 28th, a Committee is appointed to state the matters of fact; which are reported, and communicated to the Lords, at a Conference, on the 30th of April ‡.

24. The Lords having made amendments to a Bill for preventing the committing of frauds by bankrupts, to one of which the Commons disagreed, Conferences are held between the two Houses on the subject of this amendment.—The Lords insist on their amendment, and the Commons do not insist on their disagreement; and on the 1st of June, 1732, they acquaint the Lords, at a Conference,

* See in the Appendix to this volume (Nº 1.) the several reasons suggested on the part of the Lords and Commons, in objection to, and support of, this proceeding, as far as it related to the forms of Parliament.

† The Commons direct such Members as were of the Committee of Secrecy, to be a

Committee for the purpose of stating the matters of fact, on which the Bill was grounded. They report on the 14th of July, and communicate this state to the Lords at another Conference.

‡ See also the 15th of March, 1731, and the 3d and 15th of May, 1732.

That they do not insist on their disagreement * ; and they deliver back the Bill with the amendments.

25. See the proceedings on the 21st of November, 1739, on the Commons desiring a Conference with the Lords, to communicate a resolution agreed to by them, touching the interruption of commerce by the Spaniards, and to desire the concurrence of their Lordships.—See the 22d and 23d of November.

26. On the 6th of November, 1745, the Lords desire a Conference, touching certain treasonable declarations and printed papers, published and dispersed about the kingdom by the Pretender and his eldest son.—The Conference is held the next day, the 7th of November.

27. On the 29th of March, 1756, the Commons desire a Conference with the Lords, upon a matter of great importance, concerning the defence and security of his Majesty and his kingdoms, in the present critical conjuncture †

* The propriety of this last communication being made to the Lords “at a Conference, and not by message,” arose, from the Commons being at that time in possession of the Bill, which they were obliged to re-deliver.—When the Lords, on the 16th of June, 1747, do not insist, after Conference, on an amendment made by them to a Bill, they, being in possession of the Bill, make this communication

to the Commons by “message,” and not at a “second Conference.”

† This Conference was to desire the concurrence of the Lords to a resolution agreed to by the Commons, to address his Majesty, “That he would be pleased to order twelve battalions of his Electoral-troops to be forthwith brought into this kingdom.”

C O N F E R E N C E.

II. *Number of Managers; Time, and Place.*

1. **O**N the 6th of December, 1555, upon a message sent from the Commons to the Lords, to declare their opinion, that their privilege was broken, by one of their Members being bound in a recognizance in the Star Chamber, to appear before the Council, twelve days after the end of the Parliament;—a message is returned from the Lords to require six of this House to confer with the Lords upon that subject: Whereupon Mr. Comptroller, Mr. Secretary Petre, and four others, went up; and being returned, reported, “ That the Chief Justice, Master of the Rolls, “ and Serjeants, did clearly affirm, that the recognizance is no breach “ of privilege *.”

2. On the 24th of January, 1557, Mr. Speaker declared from the Lords, That it was meet to seek for the sure defence of the realm, and a relief for the same; and, to enter into that, the Lords had appointed three Earls, three Bishops, and three Barons; unto whom were appointed twenty-one of this House †.

3. A Bill from the Lords for the punishment of treasons, had been agreed to by the Commons, with a proviso by way of amendment. On the 3d of March, 1558, there is a message from the Lords, by the Solicitor General ‡, to desire That ten of this House may attend certain of the Lords to-morrow, about this proviso. On the 13th of March, it appears, from the Lords Journals, that they agreed to the amendment.

* See the observations upon this case in the 1st volume of this Work, page 74, N^o 27.

† By the ancient rule of the House, eighteen

Commoners only ought to have been appointed.

‡ See before, note * p. 22.

4. On the 31st of October, 1566, the Privy Counsellors*, with sixty-five of the House, went up to the Lords; and returning, after thanks, received answer, That on Saturday next, in the afternoon, the Lords will confer with them in the Utter† Chamber of Parliament.—This Conference was on the subject of Queen Elizabeth's marriage. See her answer on the 6th of November.

5. On the 26th of March, 1604, a Conference is desired with the Lords, about the matter of Wardship; to which the Lords agreed, and sent back word, That for their number, time and place of meeting, they would send answer by Messengers of their own. On the same day, they send a message by two Judges‡, a King's Serjeant, and a Master in Chancery, That they have appointed the Conference to be held in the Painted Chamber, at two o'clock; and that their Lordships had appointed thirty of their House, to meet such a number of this House as shall be thought fit. The Commons returned for answer, That they will attend the Conference with the number of sixty, at the time and place appointed §.

6. On the 23d of February, 1623, the Lords, having desired a Conference between both Houses, and having appointed the Painted

* See in the Lords Journals of the 30th and 31st of October, the names of the Lords and Commons, appointed to manage this Conference.—In Sir Symonds Dewes's Journal, p. 102,—126, there is a much fuller account of the subject-matter of this Conference, than in either the Lords or Commons Journal.

† This is probably, "The Outward," or what is now called "The Painted Chamber," and where Conferences between the two Houses are still usually held.

‡ These Messengers, are Sir John Popham, Lord Chief Justice of England; Sir Christopher Yelverton, one of the Judges of the Com-

mon Pleas; Sir John Croke, Knight, Deputy Chancellor of the Exchequer, and one of the King's Serjeants at Law; and Sir Richard Steele, Doctor of Laws, and a Master in Chancery.

§ The following entry is inserted in the Commons Journal of this day. "Note, as an ancient rule of the House, that, upon any Conference, the number of the Commons, named for the said Conference, are always double to those of the Lords; and the place and time of meeting appointed by the Lords."

Chamber, send word the next day, That, thinking the Painted Chamber too strait, they have, in respect of the weight and importance of the business*, thought Whitehall the fitter place. To which the Commons agree.

7. On the 11th of March, 1623, the Lords desire a Conference, and mention their number of twenty-four, but no time or place. The Commons answer, That they will give their Lordships a meeting with a proportionable number, at such time and place as their Lordships shall appoint; and immediately name forty-eight Members to attend. The Lords appoint the meeting presently, in the Painted Chamber.

8. On the 29th of April, 1624, the Lords, upon a Thursday, desire a Conference on the next day. The Commons having appointed business on that day, desire the Conference may be on Saturday; to which the Lords agree †.

9. On the 22d of June, 1625, the Commons desire a Conference with the Lords, to join in a petition to the King, for a General Fast; the time and place, and number of Committees, they leave to the Lords ‡.

10. On the 7th of July, 1625, the Lords desire a Conference, to be held "presently." The Commons send back word, "That

* This Conference was held, to hear, from the Prince of Wales and the Duke of Buckingham, their account of the Prince's Journey into Spain, and of the negotiations there. See this Report at length in the Lords Journal of the 27th of February.

† This is the entry in the Commons Journal; but what is entered of this proceeding in the Lords Journal of this day, was more probably the real state of the case, as it is more consonant to the rule and practice of Parliament. It is

there said, "That the Commons, having appointed the time, required for this Conference, for other business, desire their Lordships to appoint some other time, and they will attend accordingly." The Lords then appointed Saturday, and so answered the Messengers.

‡ The Journal of the Commons being wanting here for some days, See the proceedings upon this Conference in the Journals of the Lords.

“ they are in a serious and weighty business, which they conceive “ may hold long, and will therefore send answer by Messengers of “ their own.” On the 8th of July, the Commons send word, That they are “ now ” ready for the Conference required by the Lords ; to which the Lords answer, That they appoint the Conference to-morrow morning at eight o’clock, in the Painted Chamber.

11. On the 30th of March, 1626, the Lords desire a present meeting of a * Committee of both Houses. The Messengers naming no place for the Conference, the Messengers are called in again, to know whether they have warrant to name any place ; they answer, the place desired is the Painted Chamber.

12. On the 13th of May, 1628, the Lords desire a Conference, at three o’clock this afternoon, in the Painted Chamber ; to which the Commons answer, That they cannot be ready by three o’clock, for the Conference, but that they will give the Lords further knowledge in convenient time. On the 14th of May, the Commons send word, They are ready ; and then the Lords appoint the time and place.

13. On the 22d of April, 1640, the Lords desire a Conference, their number twelve ; answer returned, That this House will meet their Lordships at the time and place, with a double number, “ as “ the usual custom is.”

14. On the 10th of November, 1640, the Lords desire a Conference, their number is twenty ; answer returned, That the House

* It appears from the Commons Journal, that this Committee was composed of all the Members of both Houses.—“ The grand “ Committee of the House of Commons, and “ the Committee of the whole House of “ Lords.” I don’t recollect any similar in-

stance of such a conference. See in the Parliamentary History, Vol. VI. p. 451. what passed on this occasion ; and the remonstrance thereupon, presented by the House of Commons to the King, on the 5th of April.

will meet the Lords presently, with a proportionable number. See also the 14th of December, 1641.

15. On the 8th of June, 1661, the Commons desire a “present” free Conference, in “the Painted Chamber;” to which message the Lords return an answer, That they will take the message into consideration, and send an answer by Messengers of their own. The following entry is immediately made in the Lords Journal, “The Lords conceived, that the House of Commons by “this message, demanding a “present” free Conference, and appointing “the place” likewise to be in the Painted Chamber, is “a breach of the Privileges of this House; it appertaining of right “to the Lords, to appoint both the time and the place *.”

16. On the 7th of January, 1691, the Lords desire a “present” free Conference on the subject-matter of a former Conference. The question being put, “To agree to a “present” free Conference “with the Lords, as the Lords do desire;” it passed in the negative. And the Commons immediately resolve, That a message be sent to the Lords, “to-morrow morning,” to acquaint their Lordships, That this House doth agree to a free Conference on the subject-matter of the last Conference. This message is delivered to the Lords on the 8th of January, and they appoint the Conference to be held on the 9th.

17. On the 30th of December, 1692, the Lords desire a free Conference, “To-morrow at eleven o’clock.” The question being put, That the question for agreeing to a free Conference, as the Lords

* In a Conference held the same day, on the subject of this message, which is reported in the Lords Journal of the 10th of June, the Members of the House of Commons admit that this was a mistake; and say, that they will take care for the future, that no such mes-

sage shall be sent to their Lordships, nor no such entry made in their books by their Clerk. And it appears, from the entry in the Commons Journal of the 4th of June, that this mistake was corrected accordingly.

18 Conference.—*Number of Managers, &c.*

do desire, be now put, it passed in the negative; and the Messengers are informed, the Commons will send an answer by Messengers of their own. No motion was made upon this subject on the morrow, the 31st of December, but on the 2d of January, the Commons agree to this Conference, and order Colonel Granville to go to the Lords on the 3d, to acquaint them therewith. The Lords appoint the next day, the 4th of January, for holding this Conference.

18. On the 8th of March, 1704, the Commons send a message to the Lords, to acquaint them, "That when their Lordships sent yesterday to desire a Conference, the Commons were just rising; but that this House will meet their Lordships at a Conference, as their Lordships have desired, at such time as their Lordships shall appoint; the time named yesterday being now passed."

19. On the 21st of February, 1715, the Lords desire a Conference with the Commons the next day at two o'clock, in the Painted Chamber. On the 6th of March, the Commons send a message to the Lords, That they were prevented by extraordinary business * from meeting their Lordships on the 22d of February, as was desired by their Lordships, and desire the Lords to appoint some other time. The Lords appoint two o'clock the next day, the 7th of March, for holding the said Conference, to which the Commons agreed.

* On the 22d of February, the day which the Lords had first appointed for the Conference, the Commons before two o'clock, the hour named, resolved to adjourn to Thursday, the 1st of March. The reason for this extraordinary proceeding is said, in Chandler's Debates, Vol. VI. p. 67, to have been, "That, several Petitions being ready to be delivered to the House of Commons in behalf of the

"Scots Lords, that had been impeached and
"condemned, and against whom sentence had
"been pronounced, those Members, who were
"for having the law executed, in its full ri-
"gour, in order to avoid any further impor-
"tunities, moved this adjournment for eight
"days; which was carried on a division only
"by seven; the numbers being 162 to 155."

C O N F E R E N C E.

III. *Managers ; how named.*

1. **O**N the 4th of May, 1604, upon a Conference to be held with the Lords, touching the Union * of the two kingdoms, England and Scotland, every Committee was named alone, and a several question made upon his name †.

* It is well known how much King James the First had this object at heart, and how early in his reign he recommended it to Parliament, and with what unremitting attention he pursued it. The proceedings relating to it, between the two Houses, lasted from April, 1604, to June, 1607. On the 21st of November, 1606, there is entered in the Commons Journal, the instrument of the Union, signed and sealed by 39 English, and 28 Scottish commissioners. A Bill passed in this session for abolishing all memory of hostilities between England and Scotland, which is printed in the Statutes at large, 4 Jac. I. ch. 1. —See also a summary account of these pro-

ceedings in the Parliamentary History, Vol. V. p. 163 to p. 214, and compare them with the articles of Union agreed to between England and Scotland, just a century after.

† In general, a Committee of Members to manage a Conference is named as other Committees are, by Members calling the names of other Members, indiscriminately, and which are taken down by the Clerk, as he hears their names. But, if it is insisted on, the name of each Member must be moved separately, and a question put upon his being a Manager of such Conference. See the 2d vol. of this work, p. 183. N° 4.

C O N F E R E N C E.

IV. *Cause of desiring, to be expressed.*

1. **O**N the 5th of April, 1606, the Commons desire a Conference with the Lords, touching matters ecclesiastical; to which the Lords answer, That, as the proposition is very general, they desire to be certified before hand what the causes and particulars are, that they may be the better prepared to give answer. The Commons, upon this, specify the particulars, and the Conference is held.

2. On the 2d of August, 1641, the Lords desire a Conference; to which the Commons answer, That their Lordships, having demanded a present Conference, without any expression of the subject or matter of that Conference, which is contrary to the constant course of either House—this House cannot therefore yield to a present Conference. The Lords immediately send back a message for a present Conference, expressing the subject upon which it is demanded.

3. On the 10th of April, 1671, the Lords desire a Conference upon a Bill; and also a Conference, “touching an address to be made to his Majesty.” The House, taking notice that the message did not mention the subject-matter of the said address, appoint a Committee to search for precedents concerning messages of this sort; and return an answer to the Lords, That the Commons agree to the first Conference; but with respect to the other part of the message, that they would send answer by messengers of their own. On the 11th of April, the Lords acquaint the Commons, by message, That their Lordships conceive their answer so un-
parliamentary

parliamentary*, that they cannot proceed in “that” Conference; and desire a Conference upon that answer†.

4. On the 22d of March, 1678, the Lords desire a present Conference in the Painted Chamber; upon which the Commons come to a resolution, “That a message be sent to the Lords, to acquaint them, That, this House having received a message from their Lordships, whereby they desired a present Conference with this House in the Painted Chamber, it is not agreeable to the usage and proceedings of Parliament for either House to send for a Conference, without expressing the subject-matter of that Conference.” On this message the entry in the Lords Journal is, “The Lords knowing of divers precedents where Conferences have been desired, without expressing the particular occasions‡; yet, considering the important business now before them, they think it not expedient to lose any time in disputing the matter;” they therefore send a message, to desire a present Conference concerning matters relating to the Earl of Danby.

5. On the 7th of December, 1768, the Lords desire a Conference with the Commons, on the subject-matter of their message to the Lords. The Commons order, “That the messengers be acquainted, that the Commons, having sent several messages this day to the Lords, desire to know from their Lordships, upon the

* At one of the Conferences, the Commons say, “That they conceive the Lords were very sudden, by a message, to term a proceeding Unparliamentary, before reasons on either side were heard; and they conceive, there is hardly a precedent to be found, where, by a message (before any Conference) the Lords or Commons have called any thing Unparliamentary.”—See the Lords Journal of the 11th and 12th of April.

† When this matter comes to be explained,

it appears that the irregularity originated from a mistake in the delivery of the first message from the Lords; which was intended to be, not for two Conferences, but for one Conference, on the Bill and an address to the King upon some of the subject-matters of the Bill. When this had been so explained, and the message repeated properly, the Commons agreed to the Conference.

‡ No such precedents are stated by the Lords, nor has it hitherto appeared that any such exist.

22 Conference.—*Cause of desiring, to be expressed.*

“ subject-matter of which message, the Lords do desire a Conference.” The Lords then desire a Conference upon the message from the Commons, ‘ desiring the attendance of two Lords, to be examined as witnesses.’

6. On the 29th of October, 1795, the Lords send a message, desiring a present Conference in the Painted Chamber. The entry in the Journal of the 22d of March, 1678, is read, and then the Commons return an answer in the words there used. The Lords then desire a Conference, expressing the subject-matter on which it is desired.

C O N F E R E N C E.

V. *Form of holding.*

1. **O**N the 14th of November, 1558, the Lord Chancellor, Lord Treasurer, and several other Lords, came into the House of Commons, sitting where the Queen's Privy Council of this House used to sit, and the Lord Chancellor declared, That by necessity, and for the safeguard of the Realm, a subsidy must be had: Mr. Speaker and the Privy Council then sitting from them on the lowest benches*. And after this declaration made, the Lords departed.

2. On the 14th of April, 1604, is the first Conference desired by the Lords, on the subject of the Union†. In the course of this Session, several Conferences are held between both Houses, and between Committees of both Houses, on this important subject‡.

3. On the 12th of March, 1606, it was this day moved, in the House of Commons, "That, seeing the ancient proceedings of Parliament had heretofore been by way of Bill, and Conferences not so usual; and that now the inconvenience and disease being

* Nothing came from this Conference, as Queen Mary died three days after, on the 17th of November. See Parliamentary History, Vol. III. p. 355.

† Sir Edward Coke, then Attorney General, was one of the Messengers sent by the Lords to desire this Conference.

‡ There is a very curious entry in the Journal, the 16th of April, 1604, of a message from the King, desiring that the House of Commons would confer with the Members of

the Convocation House, touching some questions relating to matters of religion, then pending in the House of Commons. "Upon this message there grew some dispute; and it was urged, that there was no precedent of any Conference with a Convocation; but it was said, they would be ready to confer of any matter of that nature with the Bishops as Lords of Parliament, and wished that so much might be made known to his Majesty."

"found

“ found very great, in the long and painful standing, and being
 “ bare-headed, of such Committees as are appointed by the House
 “ upon several occasions, to attend Conferences with the Lords of
 “ the higher House, the House would be pleased to enter into con-
 “ sideration what course were fittest to be taken for the procuring
 “ some more ease and conveniency on that behalf:” a Committee
 is accordingly appointed upon this motion. On the 14th of March,
 Mr. Fuller reports the travail of the Committee, touching standing
 and being bare-headed at Conferences with the Lords: He said,
 (1.) That it appeared “ from precedent,” that in the 6th Ed-
 ward III. the Lords and this House “ sat ” all together; that upon
 any occasion of Conference, the Lords came down, and the Con-
 ference was held with us, “ in our own place of sitting.” (2.) It
 was urged “ for reason,” that in all commissions, though the persons
 were unequal in degree, yet, if they were equal in commission,
 they “ sat ” alike, and were all covered or bare-headed alike:—
 (3.) for “ necessity,” that it was found a great hurt, and danger
 to the health of their bodies, and almost impossible for the strongest
 body to endure, considering the length of Conferences, and the
 crowding and thronging there *. Upon this report it was moved,
 That

* Notwithstanding these arguments, drawn from “ precedent,” from “ reason,” and from “ necessity,” and reported almost two hundred years since, from a Committee expressly appointed to consider of this subject, no alteration has been made in the form of the Commons attending at Conferences with the Lords. —The following notes and observations of Mr. Onslow, explain very clearly what the proceedings at Conferences ought to be.

“ On the 19th of March, 1728, the Lords desire a Conference relating to Gibraltar and Minorca, which was agreed to by the Commons, and held the same day. Before the holding the Conference, a private intimation was given to some Members of the House of

Commons, that the Lords intended something new, as to the sitting and keeping on the hat of the Lord who was to manage the Conference; of which intimation to the Commons the Lords having notice, consulted among themselves, and upon established precedents settled the manner, in which the Lords, who were to manage the Conference, were to behave towards the Commons; and the Members of the House of Commons, being privately informed of this, allowed it to be agreeable to the practice of Parliament; and it was this:—“ The Commons being at the place
 “ of Conference, standing and uncovered, and
 “ the Lords coming in uncovered, but sitting
 “ down and covering their heads, the Lord
 “ President,

That Sir Francis Bacon, or some other, might be sent in message to the Lords about it ; but, upon further debate, it was resolved to be forborn at present ; and the reason—because it was probable, that the Lords might hear of the motion, consider of the reason, and provide accordingly *.

4. On

“ President, Duke of Devonshire, rose up, “ took off his hat, and standing uncovered, “ acquainted the Commons with the occasion “ of the Lords having desired the Conference, “ in words of his own, as an introduction to “ the matter of the Conference ; then sat “ down, put on his hat, and sitting covered, “ read a resolution of the Lords ; after which “ he stood up, pulled off his hat, and standing “ uncovered, delivered the resolution in paper “ to the Manager for the Commons who was “ to receive the same : after which the Lords “ rising, uncovered their heads to the Com- “ mons, and, when they had left the place of “ Conference, the Commons departed to their “ own House.” (Note, The Commons are never covered, nor do they ever sit at a Conference with the Lords.)—Mr. O.

“ On the Conferences held on the 22d and 23d of April, 1740, upon the amendments to the Bill to prohibit commerce with Spain, it was observed by the Managers for the Commons, that some of the Managers for the Lords came into the place of Conference with their hats on, which being mentioned in their return to the House of Commons, I objected to it, and so did several other Members of experience in the forms of the House. Upon which, when there was to be another Conference, some private intimation was given to the Lords of it ; and many of them insinuating that it was right so to do, much debate happened in the House of Lords upon it, and a question was there stated, to have it determined, “ for putting on the hat,” but afterwards laid aside ; and then the Lords came to the next Conference in this manner, “ They

“ had their hats on till they came just within “ the bar of the place of Conference, then “ pulled off their hats and walked uncovered “ to their seats, then put on their hats and sat “ down ; when the Conference was over, they “ rose up, pulled off their hats, and walked “ uncovered from the place of Conference : “ with which the Commons were satisfied.” (N. B. That at this free Conference, according to usage, the Lords who spoke, did it standing and uncovered.)—Mr. O.

“ At a Conference on the 25th of May, 1757, the Duke of Bedford the principal Manager for the Lords, and several other Lords, came to the Conference in the manner settled on the 22d and 23d of April, 1740, but not all ; which being objected to in conversation with the Lords, the Lords who came to the next Conference, on the 27th of May, did *all of them* very exactly conform to what had been done by the Duke of Bedford at the preceding Conference. And so this matter is, I hope, now thoroughly settled.”—Mr. O.

* The Commons before this had, on the 28th of April, 1604, complained that, with respect to the usual place of meeting (the Outward Chamber near the Parliament Presence) the House doth find it full of disease and inconvenience ; and desire the place may be better fitted ; not out of any humour, to win any dignity to this House, but merely for conveniency.—To which the Lords reply, That this inconvenience proceedeth of themselves of the Lower House, because in meeting they do exceed the number of the Committees, which the Lords do not ; and if they would not exceed their number, the Lords

hold

4. On the 19th of April, 1621, message from the Lords to desire a Conference with twenty-four of this House, and that the Committee from hence may have power, both to hear, answer, and debate. This is agreed to; and that the Committee may have power to debate, but not conclude. On the 21st of April, Sir Edward Coke reports what passed at this Conference.

5. On the 8th of May, 1626, the Commons desire a Conference with the Lords, by a Committee of both Houses, concerning the impeachment and accusation of a great Peer; to which message the Lords answer, That they accepted "not a Conference" but a * "Meeting" by a Committee of both Houses.

6. On the 19th of December, 1661, the Lords, at a Conference, propose that a joint Committee, consisting of Members of both Houses, should be appointed to sit during the recess for the Christmas Holidays, to consider of a plan, that had been formed for disturbing the peace of the kingdom. The Lords appointed twelve, and propose, That the Commons should appoint an answerable number. The Commons accordingly appoint a Committee consisting of twenty-four †.

7. On

hold the place convenient enough and of ease; and therefore the former place, in the Outward-Chamber, to continue.

* It should seem from this distinction, and from the resolution in the Lords Journal of this day, "That a Committee be appointed to receive what shall be propounded unto their Lordships, by the Committee of the Commons," as if, at this time, the word "Conference" was not usually adopted, unless it was meant that Members of both Houses should take part in the conversation; and that where they were only to hear, and not to speak, it was called a "Meeting." And yet,

on the 27th of January, 1628, these words are used promiscuously in the Lords Journal, upon a Conference held about a petition to the King for a fast. When, on the 11th of March, 1623, the Lords desire a meeting with the Commons by a Committee, consisting of a select number, Sir Edwyn Sandys says, "If we give them a Meeting, we give them an Audience, and no Conference."

† This meeting was certainly no Conference, but a joint Committee from both Houses; and accordingly, when Mr. Waller, after the recess, on the 10th of January, 1661, reports their proceedings, he states, "That the Mem-

bers

7. On the 23d of November, 1667, it is referred to the Committee of Privileges in the Lords, to consider of some way how the Lords may be better accommodated in their sitting in the Painted Chamber, than formerly, during Conferences with the House of Commons. On the 4th of December, the Committee of Privileges offer it as their opinion, “ That the table in the Painted Chamber
 “ be set cross the upper end of the chamber, where, on forms, ~~the~~
 “ Lords only are to sit; and that a bar shall be put at each end of
 “ the table, to the end no other persons may intermingle with or
 “ crowd the Lords; and that on the outside of the table there be
 “ no forms to sit on, so that the Committees appointed by the Com-
 “ mons to manage or report Conferences, may stand close to the
 “ table right before the Lords; and that no persons, who are not
 “ Members of the House of Commons, be permitted, during the
 “ time of Conference, to come above the lower bar, or rails, in the
 “ Painted Chamber.” The Lords approve of this, and order the Great Chamberlain of England to give directions accordingly.—On the 9th of December following, the Lords, at the motion of the Great Chamberlain, order, “ That a rail shall be set on that side
 “ of the table in the Painted Chamber, on which the Members of
 “ the House of Commons are to stand at Conferences, to the end
 “ that those Members, who are appointed managers or reporters of
 “ Conferences, may not be disturbed by the press of other persons,
 “ standing behind them*.”

8. On the 6th of February, 1688, the House being informed that there was so great a crowd in the Painted Chamber, that the

Members of this House, when they met with “ those appointed by the Lords, sat down with them, and put on their hats, without any exception taken by the Lords.” See in the 3d vol. of this work, p. 34. under title, *Joint Committee of Houses of Lords and Commons*, N° 1, the occasion of appointing this Joint

Committee, and the report of their proceedings.

* The place in the Painted Chamber, where Conferences continue to be held, remains now fitted up in the manner, as it should seem, as was directed by these orders.

Managers appointed to manage the Free Conference could not come to the table, the Serjeant is ordered to go to the Painted Chamber, "without * the mace," and to require the Members to return, in order to the room's being cleared of strangers. The Serjeant informs the House, That he had acquainted the Members in the Painted Chamber with the order of the House, to return, but that very few of them took notice of the direction of the House. The Clerk is then ordered to go with the Serjeant, and take the names in writing of such Members as refuse to obey the directions of the House. Immediately after which, the Lords send a message, That the Painted Chamber is now empty, and that their Lordships do expect the Members of this House at a Free Conference. And the Managers went.

9. On the 29th of July, 1689; the House of Lords were moved, "That whereas Serjeant Maynard and Sir Thomas Lee, two Members of the House of Commons, were to be Managers of the Free Conference in the Painted Chamber, and were aged and lame, they might be permitted each of them to have a stool to sit on;" which the House granted.

10. On the 1st of March, 1692, the Commons went to a Conference at the Time appointed by the Lords; but the Managers returned, and acquainted the House, That having been at the place appointed for the Conference, they understood the House of Lords was not yet sat. Upon this a Conference is desired with the Lords upon the method of proceeding between the two Houses. But the Lords immediately send down a message, "That the Speaker of

* The Painted Chamber belongs to the House of Lords, and therefore it would have been improper for the Serjeant to have gone "with the mace." His orders extended only to require the return of the Members of the

House of Commons. The clearing the Chamber of strangers, was the duty of the Lords; as soon as the Members of the House of Commons are withdrawn, the Lords send word, that the Painted Chamber is now empty.

" the

“ the House of Lords * living two miles out of town, and the badness
 “ of the road at this present, was the only occasion of their Lord-
 “ ships not coming to the Conference at the time appointed.”

11. On the 16th of January, 1702, the Managers of the Commons went to a Free Conference in the Painted Chamber, on the Bill for preventing occasional conformity; but from the crowd they could not get to the table. The Commons first send a message to the Lords, to desire they will give orders for preventing this interruption. The Lords send word, “ They have given orders; but
 “ unless the Commons will send for their own Members, it will be
 “ difficult to be done.” The Commons then send the Serjeant, and afterwards the Clerk Assistant, to summon the Members, and take the names of such as refuse to come. And when all are come in, the House order, “ That no Member do presume to go out of
 “ the House, till the Managers are gone out for the Free Con-
 “ ference, and until Mr. Speaker do leave the Chair.”

12. See the proceeding on the Conferences, holden at the desire of the Commons, touching the amendments made by the Lords to the Bill for prohibiting commerce with Spain, on the 25th and 28th of March; and on the 14th and 17th of April, 1740. On the 22d of April, the Managers from the Commons going to the Conference at the time appointed, and being returned, Mr. Walpole reported, “ That they had waited a considerable time, but that,
 “ the Lords not coming, the Managers had thought it their duty

* This Speaker of the House of Lords, was Sir Robert Atkyns, the Lord Chief Baron: he not coming, the Lords chose the Duke of Somerset Speaker, *pro tempore*. As soon as Sir Robert Atkyns came, in the course of the day, he took his seat as Speaker. He was Speaker of the House of Lords, from the 19th of October, 1689 (when he was first appointed by a Commission from the King, in the room of the Marquis of Halifax, who had acted as such till that time from the Revolution) until the 23d of March, 1692-3, when the Great Seal was given to Sir John Somers, as Lord Keeper. See the particulars of Sir Robert Atkyns's Life, in the New Biogr. Brit. Vol. I. p. 324.

“ to wait no longer*.” On the 23d, the Lords, by Message, make an excuse for this, and appoint another time for the Conference.

* It appears from the Lords Journal of the 22d of April, that, after the Lords had been informed, That the Managers of the Commons were ready, in the Painted Chamber, and the Lords had appointed their own Managers, a debate arose touching the manner of proceeding to and at the said Conference.— This was the cause of the Lords not coming at the time they had appointed. This was one of the Conferences mentioned before by Mr. Onflow, in the note, p. 25.

C O N F E R E N C E .

VI. *Rules of speaking at.*

1. **O**N the 7th of February, 1580, upon motion made by Mr. Norton, it is ordered, " That such persons as shall be appointed by this House at any time to have Conference with the Lords, shall and may use any reasons or persuasions they shall think good in their discretions, so as it tend to the maintenance of any thing done or passed this House, before such Conference had, and not otherwise : But that any such person shall not in any wise yield or assent, at any such Conference, to any new thing there propounded, until this House be first made privy thereof, and give such order."

2. It appears as if, at a Conference holden touching the grievances arising from purveyance, and which is reported on the 20th of February, 1605, some reflections had been thrown out against Mr. Hare a Member : It is immediately resolved, That Mr. Hare might be cleared by this House first, and then a message to the Lords, ' That their Lordships would not in future censure any without the judgment of this House.' Mr. Hare is justified, and a message sent to the Lords, with the desire of this House, on the 22d of February, ' That they forbear hereafter all taxations and repressions in Conferences*.'—See the 24th of February.

3. At a Conference, which Sir Edward Coke reports on the 9th of August, 1625, he says, The Lords would have sent another message by him ; but he refused, as having no authority ; and therefore desired them to send it by messengers of their own.

* There is no entry upon this subject in the Lords Journal.

4. On the 4th of February, 1640, Mr. Treasurer acquaints the House, That he had, according to the commands of the House, delivered to the Lords, at a Conference, the vote of this House, concerning the friendly assistance to be given to the Scots;—and that, after the vote was read, the Lords desired them to hear something that the Earl of Bristol had to say; but because it was no Free Conference, and that it was a Conference prayed by this House, to which, the House conceived, the Lords came only to hear, and not to propound any thing, and at which no reporters were by this House appointed, it was thought, that, according to the ancient course of Parliaments, Mr. Treasurer had no authority, nor could report any thing that was at this Conference propounded by the Lords: And therefore no report was made.

5. On the 27th of July, 1663, on the report in the House of Lords of a Conference touching the Bill of Uniformity, the Lord Privy Seal acquainted the Lords, that one of the Members of the House of Commons had said, “ That what was sent down from this House to them, touching this Bill, had neither justice nor prudence in it;” which words the Lords held derogatory to the honour of this House, and the Privileges of Parliament: And they resolve, “ That this House will, in the next session, take into serious consideration (before they enter upon any other matter whatsoever) how to provide for the future, that their privileges may not be infringed or broken.”

6. On the 4th of January, 1692, the Commons, though at a Free Conference, decline proceeding to debate the subject-matter of the Conference, till they had acquainted the Commons with what the Lords had said. See this Case under the next Title, “ Free Conferences.”

7. On the 20th of March, 1696, a complaint is made to the House, that a Member of this House, at a Free Conference with the Lords, had argued against a Bill, sent up by this House to the Lords. The House order the Member to be named. "Sir Samuel Bernardiston." An account is then given to the House, of what he said, and how he argued against the Bill: and Sir Samuel Bernardiston being heard in his place, and being then withdrawn; the House resolve, "That in consideration of his great age and infirmities, and of his sufferings and services* formerly in maintaining the rights of this House, Sir Samuel Bernardiston be called in, and in his place "only" reprimanded by Mr. Speaker;" which is done accordingly.

8. On the 13th of June, 1701, Mr. Harcourt reports from a Free Conference, some expressions used at the Conference by the Lord Haversham; which had been immediately objected to by Sir Christopher Musgrave; and which the Managers thought to be so great an aspersion on the honour of the House, that they considered themselves, as obliged in duty instantly to withdraw. The Commons resolve, (1.) "That John Lord Haversham hath, at the Free Conference this day, uttered most scandalous reproaches, and false expressions, highly reflecting upon the honour and justice of the House of Commons, and tending to the making a breach in the good correspondence between the Lords and Commons, and to the interrupting the public justice of the Nation, by delaying the proceedings on the impeachments:" And (2.) "That John Lord Haversham be charged before the Lords, for the words spoken by the said Lord, this day, at the Free Conference: And that the Lords be desired to proceed in justice, against the said Lord

* This refers to what passed in the year 1668, on the dispute between the Lords and Commons, in the case of Skinner and the East India Company—when Sir Samuel Bernardiston was fined and imprisoned by the

Lords. See the Report of this matter, made by the Solicitor General Finch, on the 21st of October, 1669—in the 3d vol. of this work p. 345.

“ Haversham ; and to inflict such punishment upon the said Lord as
 “ so high an offence against the House of Commons does deserve.”
 And that Sir Christopher Musgrave do carry the said message. On
 the 14th of June, the Lord Haversham desires from the Lords,
 to have a copy of the Charge ; which is granted him. On the
 19th he delivers in his Answer ; which is brought to the Commons
 on the 20th of June. No further proceeding is had upon it in the
 House of Commons, as the Parliament is prorogued on the 24th ;
 but the Lords upon that day resolve, “ That the Commons not
 “ having prosecuted their charge, for words spoken by Lord
 “ Haversham at a Free Conference, the said charge shall be dis-
 “ missed.”

9. At a Free Conference held on the 25th of February, 1702, on
 the subject of the public accounts ; the Lords order their Managers,
 “ That they be restrained, not to permit the Commons to dispute
 “ the Lords’ jurisdiction*.”

* See the proceedings in this case at length in Vol. III. p. 120, and in the Appendix to that
 Vol. N° 13.

C O N F E R E N C E .

VII. *Free Conference.*

1. **B**EFORE the Free Conference, which was held touching the question of the Post Nati, it was resolved, on the 23d of February, 1606, That the Committees might beforehand agree amongst themselves to distribute the parts of the argument which was to be urged*; and to consider upon whom it might be fittest to impose the maintenance of every several head†.

2. On the 19th of May, 1628—See, in the Journals of both Houses, the proceedings at the Free Conferences touching the Petition of Right ‡.

* On the 24th of February, this Committee report the names of several persons for the particular topics; and out of these the House select,

Sir Francis Bacon,—To make the entrance by way of preamble.

Sir Edwyn Sandys,	} To offer reasons and precedents touching the moral law of nations—
Sir Roger Owen,	

Sir John Bennet,	} To assist for matter of civil law.
Dr. James,	

Mr. Solicitor,

Mr. Hyde,

Mr. Brock,

Mr. Crewe,

Mr. Hedly,

}	To maintain argument for matter of common law.

† See in the Journal of the 13th, 14th, 17th, and 18th of February, the heads of the arguments on both sides of the question.—See also Sir Edward Coke's Report of Calvin's Case, in the 7th Report, and the argument of Sir Francis Bacon, then Solicitor General, in his Works, Vol. II. p. 153. These, with Serjeant Moore's Report of the proceedings in Parliament on this question, and Lord Ellesmere's speech in the Exchequer Chamber, as published by himself, are collected together, and printed in the 11th Vol. of the State Trials, p. 75.

‡ For the debates upon this very important proceeding, and particularly upon the saving of the King's sovereign power, which had been added by the Lords—See the 1st Vol. of Rushworth's Collections, page 561, et subseq.

3. On the 5th of February, 1666, the Lords refuse a Free Conference, after two Conferences held, upon the subject-matter of Lord Mordaunt being permitted, upon his trial on an Impeachment, to sit within the Bar *.

4. The House of Commons, on the 12th of November, 1667, having carried up the impeachment against Lord Clarendon, desired, That he might be sequestered from Parliament, and forthwith committed to safe custody—the Lords desire a Conference upon this message on the 15th, in which they communicate to the Commons their resolution and their reasons, for not agreeing to this request: The Commons desire another Conference, which is held on the 19th of November; in which they assign their reasons for insisting upon their demand.—On the 21st of November, the Lords desire another Conference; to which the Commons answer, That they conceive there was a mistake in this last message, for that it should have been for a “Free” Conference, by the usual course of proceeding between the Houses †.

* See the proceedings upon these Conferences, and Free Conferences, in the Appendix to this Vol. N° 9.

† This brought on a discussion between the two Houses, as to the order of their proceeding—the reasons alledged by each party are in the Lords Journal of the 21st, 22d, and 23d of November. On the 23d of November, the Commons acquiesce in a Conference, as desired by the Lords message of the 21st, without insisting on its being a “Free” Conference.—This Conference is held; and on the 26th of November, the Commons demand a “Free” Conference, upon the subject-matter of this last Conference. This message is referred by the Lords to their Committee of Privileges, who report on the 27th,

and then the Lords agree to a “Free” Conference.—The report of this Free Conference, which is held on the 28th, is entered in the Lords Journal of the 29th of November, 1667.

—On the 2d of December, the Lords acquaint the House of Commons, by message, “That they are not satisfied to commit the Earl of Clarendon, and sequester him from Parliament, before particular reasons are specified or assigned.” Upon which the Commons resolve, “That this refusal of the Lords is an obstruction to public justice, and is of evil and dangerous consequence.” —See in the Appendix to this vol. N° 6, the Report of the Free Conference of the 28th of November.

5. On the 26th of January, 1670, the Commons disagree to the amendments made by the Lords to a Bill, and desire a Conference to acquaint them, and to assign their reasons for such disagreement; which Conference is accordingly held on the same day.—On the 3d of February, the Lords desire another Conference, which is held upon the 4th; at which the Lords assign their reasons for not agreeing to the reasons of the Commons, and for adhering to their amendments. The Commons, on the report of this Conference, resolve, That they are not satisfied with the reasons given by the Lords; and * then desire a “Free” Conference upon this subject.—this is held on the 6th of February; and several “Free” Conferences are afterwards held, on the 9th and 11th of February.

6. On the 20th of April, 1671, the Lords desire a “Free” Conference on the subject matter of the last Conference, on a Bill to prevent Frauds in selling of Cattle;—this is agreed to; but the Managers are ordered to acquaint the Lords of their mistake, in asking a “Free” Conference, when there had been but one Conference in that matter.—The Lords admitted that this was a mistake.

7. On the 15th of May, 1675, the Commons desire a Conference upon a message sent from the Lords, in relation to a warrant, signed by the Speaker;—this is agreed to, and held. On the 20th of May, the Lords desire another Conference upon this subject—this is reported on the 21st; and then the Commons, not being satisfied with the reasons alledged by the Lords in support of their message, demand a “Free” Conference.

8. The Lords, on the 2d of February, 1688, having made amendments † to a resolution of the Commons, about the vacancy of the
Throne,

* This proceeding is perfectly regular, and consonant to the practice that has since been observed by both Houses.

† These amendments were to change the word “abdicated,” which the Commons had used, to express James the Second’s dethronement.

Throne, and which had been sent up for their Concurrence—to these amendments the Commons disagree—and desire a Conference to assign their reasons. This Conference is held on the 4th of February. On the 5th of February, the Lords desire another Conference, which is held on that day, at which the Lords acquaint the Commons that they insist upon their amendments—and give their reasons for insisting. The Commons still disagree to the Lords amendments, and then desire a “Free” Conference—which is held on the 6th of February; and on the 7th, the Lords send word, that they agree to the vote of the Commons without any alteration.

9. The Lords having amended a Bill from the Commons for abrogating the oaths of allegiance and supremacy, and substituting others—to these amendments the Commons disagree, and at a Conference assign reasons. The Lords insist upon their amendments, and at another Conference assign their reasons for insisting. The Commons then, on the 22d of April, 1689, demand a “Free” Conference; which is held on that day. On the 24th of April the Lords demand “a Conference” on the subject-matter of this Bill. This irregularity being taken notice of, a message is sent to the Lords to acquaint them, “That the Commons do not conceive it “to be according to the course of Parliament, to have a message “for “a Conference †,” after there hath been “a Free” Conference upon the same subject.” Upon which message the Lords immediately desire “a Free Conference.”

10. On the 31st of May, 1689, after several Free Conferences on amendments made by the Lords to a Poll Bill, the Lords resolve to adhere to their amendments; and the Commons resolve to adhere

tion of the government, into the word “deserted;” and to leave out the words “and that the throne is thereby vacant.” The debate at the Free Conference held between the

two Houses upon this subject, are collected and printed in 1695, in a small volume,

† See the account of this proceeding in Grey's Debates, Vol. IX. p. 229.

to the Bill, without the amendments proposed by the Lords, upon which a Committee is appointed by the Commons, to consider of the methods of proceeding between the two Houses, upon Conferences in passing of Bills. Further disputes arising, on the Conferences held upon the Bill for reversing the judgments against Titus Oates, on the 6th of August a Conference is desired with the Lords, for settling the methods of proceeding upon Conferences, and Free Conferences, between the two Houses. On the 13th of August, the Committee appointed to prepare what is to be offered to the Lords at this Conference make their report *.

11. On the 16th of July, 1689, a Free Conference is demanded by the Commons, after two Conferences, which had been held on amendments made by the Lords to the Bill of Rights.—So on the 27th of July, upon the amendments made by the Lords to a Bill for collecting duties upon coffee, &c.

12. The Lords having amended a Bill relating to taking the Oaths of Supremacy in Ireland, the Commons disagreed to some of these amendments, and on the 1st of December, 1691, communicate to the Lords, at a Conference, their reasons for this disagreement. On the 5th of December, the Lords hold another Conference with the Commons, on the subject of these amendments, and on the 9th of December, the Commons desire (not a "Free *" but) another Conference on the same subject.

13. On

* This report being probably settled by Mr. Somers, who was then Solicitor General, and Chairman of the Committee, and containing much curious matter, touching the reversal of erroneous judgments in the Courts of Law, and concerning the rules of the Houses upon Conferences, is inserted in the Appendix, N° 2. It does not appear that this Conference ever was held; as the Lords, upon re-

ceiving the message, appoint a Committee to see what precedents may be found for granting of Conferences, after adhering; which Committee does not make any report.

† This proceeding was regular; because the object of this Conference was, not to adhere, on the part of the Commons, to their former disagreement (if it had, this should have been a "Free Conference") but to suggest

13. On the 31st of December, 1691, the Commons, after two Conferences, desire a Free Conference on the subject of an amendment made by the Lords to a Bill for the regulating of Trials in cases of treason. This Free Conference is held on the 5th of January. Another Free Conference is held on the 9th; and upon the 13th of January, Mr. Montagu reports what passed at both these Conferences *.

14. The Commons having, on the 21st of December, 1692, communicated to the Lords, at a Conference, a resolution they had come to on the 20th, approving Admiral Russell's conduct, after considering several papers, which had been communicated to them by the Lords, at a former Conference—the Lords, on the 30th of December, desire a "Free" Conference. This is held on the 4th of January; when the Lords complain of this proceeding on the part of the Commons, "That it was an unusual proceeding, because
" the vote was concerning a matter of fact only, without giving
" any reasons to the Lords, which induced the Commons to make
" that vote." The Commons acquaint the Lords, "That though
" they had, to preserve a fair and good correspondence with their
" Lordships, agreed to this Free Conference, they had no power to
" proceed to debate the matter till they had acquainted the Com-
" mons with what their Lordships had said †."

15. On

gest amendments to the amendments made by the Lords, which introduced new matter, and to which the Lords agreed on the 10th of December, and acquaint the Commons by message.

* This report, containing much parliamentary learning, touching the trial of Peers in Parliament, and of Bishops, as well for the offence of high treason as for other crimes, and also relating to the Court of the High Steward; and being managed on the part of the Commons by Sir George Treby, and Mr. So-

mers (the Attorney and Solicitor General) and others of the greatest ability, as well in the House of Commons as in the House of Peers; and not being printed in the Lords Journal—is, together with a report made to the House of Lords on the 18th of January, 1691, from a Committee appointed to inspect commissions for Lords High Stewards, upon trials of Peers out of Parliament, inserted in the Appendix, N^o 3.

† In this the Commons were regular. The Lords had made a mistake in demanding a
"Free"

15. On the 20th of March, 1696, the Lords resolve, That the manner of informing the Commons of their Lordships adhering to their Amendments to a Bill, is at a Free Conference *, where they assign their reasons.

16. On the 25th of January, 1702, the Lords being moved, “ to take into consideration what method is to be used in returning to the House of Commons a Bill, where the Lords, after a Free Conference, have adhered to most of their Amendments ”—a Committee is appointed to search precedents relating to this matter. On the 29th of January, the Lord Steward reports from this Committee, That their Lordships find the Bill is to be delivered at a Free Conference, sometimes with, and sometimes without reasons.” And the Committee report the several precedents †. After which it is agreed, to deliver the Bill at a Free Conference.—This Free Conference is held on the 1st of February.

17. On the 27th and 28th of June, 1717, two Conferences having been held, touching the mode of proceeding to make good the Articles of Impeachment against Lord Oxford; and the Lords persisting, “ That the Commons be not permitted to make good the Articles for High Crimes and Misdemeanors, till judgment be first given on the Articles for High Treason ”—the Commons, o

“ Free ” Conference. They should have only demanded a Conference, and there stated their reasons for thinking the proceeding informal;—and if the Commons had, at a subsequent Conference, justified what they had done, then the Lords might regularly have demanded a “ Free ” Conference. This mistake, on the part of the Lords, reduced this “ Free ” Conference to a common Conference. The Lords, however, had not committed this error, from want of consideration; as, on the 22d of December, they appoint a Committee to inspect their Journals, to see whether any Free

Conferences have been desired with the Commons, wherein the House have not disagreed with them. On the 29th, this Committee make their report; and on the 30th of December, the Lords send their message for this Free Conference.

* This was after a Free Conference, at which the Commons had insisted on their disagreement to the amendments made by the Lords to a Bill passed by the Commons.

† See the references to these precedents in the Lords Journal.

28th of June, desire a Free Conference; to which, on the 1st of July, the Lords reply, by message, "That the subject-matter of the last Conference being concerning a point of judicature determined by their Lordships after the Trial begun, their Lordships do not think fit to give a Free Conference, as desired by the Commons*."

18. The Lords having amended a Bill for prohibiting commerce with Spain; the Commons, on the 25th of March, 1740, disagree to these amendments. On the 28th of March a Conference is held, to communicate to the Lords the reasons for this disagreement. On the 14th of April, another Conference is held, at which the Lords assign their reasons for insisting on some of their amendments.—These reasons are considered on the 17th of April, when the Commons insist on their disagreement, and demand a Free Conference with the Lords upon this subject; which is held on the 23d †; and on the 24th the Lords, "by message," acquaint the Commons they do not insist on their amendment.

19. On the 24th of May, 1757, the Commons desire a Conference with the Lords, to communicate reasons for disagreeing to amendments made by the Lords to the Militia Bill. This Conference is held on the 25th. On the 27th, another Conference is held, at which the Lords give their reasons for insisting upon some of their amendments. These reasons are taken into consideration on

* Upon this message, the Commons immediately resolve to desire a Conference; to which the Lords agree. It is held on the 1st of July; the Commons state, "They apprehend the subject-matter of the last Conference not to be a point of judicature, but a point relating only to the prosecution of the Commons; it having arisen before any matter of judgment had come before the Lords upon the trial." Another Confe-

rence is held upon the same day, at the desire of the Lords, at which the Lords acquaint the Commons, "That their Lordships insist upon denying a Free Conference, as desired by the Commons."

† See in the Lords Journal of the 23d of April, their report of what passed at this Free Conference. This is the Conference which is referred to by Mr. Onslow, in the note in this vol. p. 25.

the 7th of June, when the Commons amend some of the Lords amendments, and do not insist upon their disagreement to the rest. The Commons then demand "a" * Conference upon the subject-matter of the last Conference, which is holden on the 8th; and the Lords, on the 8th, agree to the amendments made by the Commons; which agreement they communicate "by message †."

OBSERVATIONS *on* CONFERENCES.

Very few Observations arise out of this subject, that have not already occurred, either in the reasons and arguments of the Lords and Commons, which are printed in the Appendix, or in the Notes on the several preceding cases.

The principal rules, to which both Houses have thought themselves bound to conform, in the manner of demanding or holding Conferences, are reducible under one or other of the following heads:

(1.) First,

That the Conference, if it is upon the subject of a Bill depending between the two Houses, must be demanded by that House, which, at the time of asking the Conference, is in possession of the Bill; and though some of the more ancient precedents are of instances, where

* Had the Commons insisted upon their disagreements to the Lords amendments, they should have demanded a "Free Conference;" but, as they only amend the Lords amendments, this proceeding was regular, as before, N^o 12.

† The Bill being with the Lords, they communicate their agreement "by message." If this proceeding had been reversed, and the

Bill had been with the Commons, the more regular proceeding on their part would have been, as is observed before in the note, p. 12, to desire another Conference, to deliver this agreement, and the Bill; as the Bill must remain ultimately with the Lords. The same observation applies to the proceeding in N^o 18.

44 Conference.—*Observations on Conferences.*

one House of Parliament has demanded of the other their reasons for bringing in, or amending, or refusing to agree to, certain Bills, these proceedings (as they were very properly declared to be irregular as long ago as the year 1575, in the case of Lord Stourton's Bill; and again in 1661, upon the Bill for the Execution of Persons attainted of High Treason) ought not to be followed as examples; because, instead of composing differences, which is the object of a Conference, they tend rather to raise disputes, touching the privileges and independency of that House, of whom such reasons are demanded.

The subjects, upon which it happens that Conferences are most frequently demanded, are, where amendments have been made by one House to a Bill passed by the other, to which amendments the House desiring the Conference have disagreed; and the purpose of the Conference is to acquaint the House which first made the amendments, with the reasons for such disagreement; in order that, after considering those reasons, the House may be induced, either not to insist upon their amendments, or may in their turn assign such arguments for having made them, as may prevail upon the other House to agree to them.

Where, from inattention to the forms established upon this occasion between both Houses, either House has sent a message that they disagree to amendments, and has not desired a Conference to assign their reasons for such disagreement, we find that the Bill has been re-delivered, "to the end that the due course of Parliament in the transmitting of things of this nature may be observed." If the House, which amend the Bill, are not satisfied and convinced by the reasons urged for disagreeing to the amendments, but persevere in insisting upon their amendments, the form is, to desire another Conference; at which, in their turn, they state their arguments in favour of the amendments, and the reasons why they cannot depart from them;

them; and if, after such second Conference, the other House resolve to insist upon disagreeing to the amendments, they ought then to demand a “Free” Conference, at which the arguments on both sides may be more amply and freely discussed.—If this measure should prove ineffectual, and if, after several Free Conferences, neither House can be induced to depart from the point they originally insisted upon, nothing further can be done, and the Bill must be lost.

(2.) Secondly,

Whenever a Conference is demanded by either House, it is the sole privilege of the Lords to name the time and place at which it shall be holden.—The Commons may, if they see any inconvenience either in the place or time appointed by the Lords, disagree to the holding of the Conference under those circumstances, and may state to the Lords their reasons for not complying with their request; it then rests with the Lords, if they think proper, to change the time or place;—but in no case will the Lords permit the Commons, nor indeed have the Commons ever claimed the privilege, to name the place or time of meeting*.—It has not of late been customary for either House, in demanding a Conference, to acquaint the other House with the number of Managers they have appointed; but whenever this is done, the form is, and it was an ancient rule as long ago as in the year 1604, “That the number of the Commons named for the said Conference are always double to those of the Lords†.”

(3.) Thirdly,

Another essential rule, which ought to be observed in demanding a Conference, is, That the House, which ask the Conference, do in

* See note §, p. 14—and N° 9, p. 15—and N° 15, p. 17, with the note.

† So in messages to the King, by Members of both Houses, the number of those appointed

by the Commons, is double that appointed by the Lords.—See also a message sent to the Prince of Wales on the 29th of January, 1782.

46 Conference.—*Observations on Conferences.*

their message clearly express the subject-matter upon which the Conference is desired. And it appears from all the precedents, that, where this has been omitted, the House, to which the application has been made, have assigned this omission as a reason for their not complying with the request. The observance of this form appears to be not only a matter of civility from one House of Parliament to the other,—that in asking their attendance, they should be informed of the subject upon which that attendance is required ;—but that it is necessary such information should be given, in order to enable the House to judge, whether the matter is of sufficient importance to induce them to agree to the Conference; or, which is still more material, whether the Conference demanded may not relate to a subject, upon which, consistently with the preservation of their privileges, they cannot consent even to meet and confer.—Many cases of this sort might be stated, in which the exclusive claims of each House, and their independency, one of the other, with their sole right of judging of the conduct of their own Members, would justify them in refusing a Conference, at which any of these subjects might be brought into discussion.—However this form, of expressing the subject-matter upon which a Conference is desired, has not always been so strictly observed, particularly in later times, as not to admit of very general matters being alleged, as subjects for demanding a Conference—A message, to desire a Conference “ upon a matter, “ highly concerning the honour of his Majesty, and his Government”—Or, “ upon a matter in which the honour and interest of “ the public are essentially concerned ”—Or, “ upon a subject “ highly important to the privileges of both Houses of Parliament ”—without specifically stating, what interest of the public, or what privilege of Parliament, is to be the immediate topic of discussion, has, with several other subjects as general, been held to be sufficient to justify either House of Parliament in consenting to a Conference so demanded ;—but of this that House must be the judge, to which the request is made ; and if they are not satisfied, they will decline agreeing

agreeing to the Conference demanded, until they have further and more explicit information upon what subject their presence is required.

(4.) Fourthly,

With respect to the form and manner of holding Conferences, and the rules to be observed by the Managers of both Houses in coming to, holding, and departing from, the place of Conference, these are all so clearly and accurately laid down by Mr. Onslow, in the three instances *, which happened whilst he was Speaker, in the years 1728, 1740, and 1757, that it is impossible to add any further information upon that subject †.

(5.) Fifthly.

Before the Managers go to a Conference, which is not a Free Conference, it is usual for the House, desiring the Conference, to appoint a Committee to draw up reasons to be offered in support of the measure which the House has adopted;—these reasons are reported from the Committee; and, when agreed to by the House, are ordered to be communicated at the Conference to the Managers appointed by the other House. The Managers therefore having no other authority, than to read and deliver in such reasons for the proceeding as the House have agreed to, it is irregular for any Member to speak at such Conference, or to suggest any thing, unless by way of introduction to the delivery of the reasons. It is as irregular for

* See note, p. 24 and 25.

† “During the time of a Conference, the House can do no business, till the Conference is over; and the practice is, as soon as the names of all the Managers are called over, and they are gone to the Conference, for the Speaker to leave the Chair, without any question, and he resumes the Chair again, on the return of the Managers from the Conference.

—This is expressly stated in the Journal of the 16th of January, 1702.—It is the same whilst the Managers of an impeachment are at “the House of Lords,” as I remember the Speaker, Mr. Compton, did, at the trial of Lord Macclesfield.—He then came, “with-
out his gown,” and stood privately in the door-way of the House of Lords, next to the box appointed for the Managers.”—Mr. O.
When

for any of the Managers on the other side, ("who, as was properly observed on the 4th of February, 1640, come only to hear and not to propound any thing,") to introduce any matter at the Conference, either from themselves, or from the House which appointed them; and any proceeding of that sort would be, as it was then stated to be, "not according to the ancient course of Parliaments." The Managers on neither part have, at such a Conference, any authority to go beyond the instructions they have received; those, who are appointed by the House desiring the Conference, are merely to read and communicate the reasons already adopted; the others to hear and receive those reasons, which they are afterwards to report, from the Conference, to the House, of which they are Members.

(6th.) Sixthly,

If the reasons, alleged on both sides, fail of their effect, to induce either House to desist from that measure, which is the subject-matter of the Conference, nothing remains but to hold a "Free" Conference; which admits a more liberal discussion of the question under consideration, and gives an opportunity for the Managers, individually, and not restrained by any precise form of argument, to urge such reasons as appear to them to be of weight, to support the cause in which they are engaged, and that may best tend to influence the House to which they are addressed.—Here, though, as in the instance of the *Post Nati* *, the House may distribute amongst the Managers the several heads and topics upon which they are to insist, the arguments in support of those topics must be suggested by themselves.—A Free Conference is usually demanded after two Conferences have been holden without effect; and though in the instance in 1667, relating † to Lord Clarendon, the Commons ac-

—When the trial is in Westminster Hall, and the House of Commons attend, as a Committee of the whole House, there the Speaker has a place assigned him, in the gallery, where

he attends "in his gown."

* See the note to N° 1. p. 35.

† See before N° 4. p. 36, and the note.

quiesced in a third Conference, without insisting that that should be a "Free" Conference, I apprehend that the Commons were justified in objecting to this, and stating as they did to the Lords, "That, according to the usual course of proceeding between the two Houses, there was a mistake in the Lords desiring a Conference, and that it should have been a Free Conference."

After one Free Conference, no Conference but a Free Conference can be holden touching the same subject; unless some question of Privilege, or of the Order of Proceeding, should arise, from the conduct of any of the Managers, or of either House to the other, or that some alteration should have been made in the matter, as it stood at the former Free Conference; in that case, a Conference, not a Free Conference, may be demanded upon that particular matter*.

Under one or other of these heads may be classed, I believe, every thing that is essentially material for either House to observe, in demanding, or in consenting to, or holding, Conferences between the two Houses, as well upon amendments to Bills, as upon any other subject whatsoever.—These forms have been established by long experience, and confirmed by repeated and almost invariable usage; and therefore, though in some circumstances, relating to the time and place of meeting, and to the conveniency for the attendance of the Managers, the Lords appear to have some advantages above the Members of the House of Commons, inconsistent with that equality which in other instances subsists between the two Houses, it is for the public advantage that these forms should be strictly adhered to. The object, upon this occasion, being to preserve order and regularity in the proceedings between two great assemblies, this cannot be attained with more certainty, than by observing known and long-established rules, whatever those rules may be, or to whatever objections they may appear to be liable.

* See under "Free Conference," N^o 9, 10, 12, and 19.

I M P E A C H M E N T.

CHAPTER THE FIRST;

*From the earliest Records, to the End of the Reign of
Queen Elizabeth.*

- I. *Impeachment by the Commons.*
 - II. *Judgment by the Lords.*
 - III. *Bills of Attainder.*
 - IV. *Bills of Pains and Penalties.*
-

I. *Impeachment by the Commons.*

1. **I**N 1376, the 50th year of Edward III. Richard Lyons and others, merchants of London, were complained against by the Commons for certain misdemeanors, in removing the staple of wool and other merchandize from Calais; in lending money to the King upon usurious contracts; and in bargaining with the King's creditors, to take off the sums due to them upon a small advance; and for many other extortions, deceits, and oppressions, by the said Richard Lyons, as farmer of the subsidies and customs.—To this accusation Richard Lyons pleads, Not Guilty, with respect to some of the articles, and with regard to others, submits himself to the King's mercy.—Upon which the said Richard Lyons is committed to prison, during the King's pleasure, and adjudged to pay a fine,

fine, to be disfranchised in the city of London, never to hold any office under the King, nor to approach his council or court.—Rot. Parl. Vol. II. p. 323. N° 16. et subf. *

2. See similar proceedings against William Latimer, William Ellis, and others, in the same Parliament. (Rot. Parl. Vol. II. p. 324. et subf.) The words of the record are, “ William Sire de Latimer, “ estoit empechez et accusez per Clamour des ditz Communes de “ diverses deceits, &c.”—to which the Lord Latimer, saving his right as one of the Peers of the Realm, puts in his particular answer to each article of the accusation. And, after many reasons urged before the Prelates and Lords, as well on the part of the King, as on the part of Lord Latimer, and several examinations had, after long deliberation, judgment was given in Parliament against him; and he is awarded by the Prelates and Lords in full Parliament, to be committed to prison, and to pay a fine at the King’s pleasure. Upon which the Commons pray the King, that, being convicted of the crimes alleged against him, he may be ousted of all his offices, and be never of the King’s Council; which request is granted †. He is afterwards bailed by several Bishops, Lords, and others, “ ses “ mainpernours durant le Parlement, et par celle mainprise le Ma- “ reſchal d’Angleterre luy leſſaſt aller a large.”

3. In the Parliament, 10th Richard II. 1386, the Commons with one accord came before the King, Prelates, and Lords, in the chamber of Parliament, and accused Michael de la Pole, Earl of Suffolk ‡, and late Chancellor of England, of several crimes; the principal

* The Rolls of Parliament referred to in this Work, are those printed in six volumes, by direction of the House of Lords.

† In the 51st of Edward III. the next Parliament, Bills were sent up to the Lords from the Commons, for reversing these and several

other judgments, as having been given without due process; but the Parliament being put an end to on that day, these Bills did not pass.—Rot. Parl. Vol. II. p. 374. N° 87. et subf.

‡ “ Tous les Communes, d’un accord, et “ unement assemblez viendrent devant le Roi,

principal of which were, “ That he had purchased lands of the King to a great value, for less than they were worth, in deceit of the King: And that, where monies had been granted by the Commons, to be expended, according to the manner desired by the Commons, and agreed to by the King and Lords, and no otherwise, yet these monies had been misapplied to other purposes.”—To these accusations the Earl of Suffolk put in his answer to all the several articles. The Commons reply, and the Earl rejoins to this replication. After which the said Earl, at the request of the Commons, was, on account of the greatness of the crimes alleged against him, arrested by the King’s command, and delivered into the custody of the Constable of England, and then bailed. Judgment was then pronounced against him, upon several of the said articles. And, for that he was convicted for non-sufficiency of his answers to the crimes specified, it was awarded, “ That he should be committed to the “ King’s Prison, there to remain till he should have paid a fine, “ according to the King’s pleasure.”—But with respect to those articles, which related to his conduct as a Minister, and one of the King’s Council, it seemed to the King and Lords of Parliament, that he ought not to be impeached for these by himself, without his companions, who were then of the King’s Council. But if “ any “ special offence ” was objected against him, he should be ready to answer †.—Rot. Parl. Vol. III. p. 216. N° 6 to 17.

“ Prelatz et Seigneurs, en la Chambre de
 “ Parlement, compleignant griefment de
 “ Michel de la Pole, Count de Suff. darrein
 “ Chancellor d’Engleterre, lors estant present,
 “ et lui accuserent *par demonstrence de bouche*.”
 —See in the 1st vol. of State Trials, these proceedings against the Earl of Suffolk, in 1386; and further proceedings in 1388, against the said Earl, Sir Robert Tresilian, Lord Chief Justice, and others concerned with him, for other offences.—The State Trials, referred to here, and in the subsequent parts of this Work, are the 2d edition in six volumes fol. published by Sollow Emlyn, Esq; the four supplemental volumes published afterwards in 1735,

and 1766; and the eleventh volume published by Mr. Hargrave.

† See a translation of the articles at length, in the Parliamentary History, Vol. I. p. 397. They are also, together with the Earl’s answers, inserted in Petyt’s Jus Parl. ch. vii. p. 182. Walsingham relates, “ That all the articles “ were so fully proved, that the Earl of Suffolk: “ could not deny them; insomuch that when “ he stood upon his defence, he had nothing “ to say for himself: whereupon, the King, “ blushing for him, shook his head, and said, “ Alas! alas! Michael, see what thou hast “ done!”

4. On the 2d of March, 1388, 12th Richard II. Sir Robert Belknap, late Chief Justice of the Common Bench; Sir Roger Fulthorpe, Sir John Holt, and Sir William Burgh, late his companions, Judges of the same Bench; Sir John Cary, late Chief Baron of the Exchequer; and John Lockton, late King's Serjeant at Law, were brought into Parliament at the request of the Commons, and there, by all the Commons assembled for all the Counties, Cities, and Boroughs of England, were accused and impeached of certain crimes, viz. for answering certain questions that had been put to them *, relating to matters of treason, and to which answers they had put their hands and seals †; which questions and answers were read to them. To these accusations they severally plead, stating the circumstances under which these questions were put to them, and the answers given; and pray, That they may have a gracious and merciful judgment. To this the Commons replied, "That, being taken and holden for sages of the law, they should have answered as the law was, and not otherwise, as they did, with design, and under colour of law, to murder and destroy several Lords and others." And therefore the Commons prayed, "That the said late Judges, Barons of the Exchequer, and King's Serjeant, might be adjudged convicts, and attainted of treason, and as traitors to the King, and his kingdom." Upon which, the temporal Lords took time to advise, and examine the said matter, and all the circumstances: and then awarded, with the assent

* John Blake and Thomas Usk were impeached by the Commons at the same time, "For that, being of the King's Council, they had drawn up the questions, to which the Judges had answered; and had been aiding and advising in the Treasons aforesaid. They were found guilty, and condemned as Traitors and executed." (Rot. Parl. Vol. III. p. 240, 241, 244.) Afterwards, in this Parliament, all the Lords, as well spiritual as temporal, then present, "claimed, as their liberty and franchise, that the gross matters, moved in this Parliament, and that should

"be moved in other Parliaments *in time to come*, touching the Peers of the land, should be brought, adjudged, and discussed, *by the course of Parliament; and not by the Civil Law, nor by the Common Law of the land, used in other the inferior Courts; which claim, liberty, and franchise, the King allowed and granted in full Parliament.*"

† See, in the 2d Vol. of this Work, p. 292, the extracts relating to this proceeding, from Millar's Historical View of the English Government, and his observations thereupon.

of the King, “ That they should be drawn and hanged as traitors *,
 “ their heirs disinherited, and their lands, tenements, goods, and

* Sir William Blackstone, in the 4th Book of his Commentaries, ch. xix. sect. 1. lays it down, “ That a *Commoner* cannot be impeached before the Lords for any *capital offence*, “ but only for high misdemeanors.” And, to prove this position, he cites the case of Simon de Beresford, from Rot. Parl. 4th Edward III. No 2, and 6.—This case is as follows: When “ in 4th Edward III. the King demanded the “ Earls, Barons, and Peers, to give judgment “ against Simon de Beresford, who had been a “ notorious accomplice in the treasons of “ Roger Earl of Mortimer, they came before “ the King in Parliament, and said all with “ one voice, that the said Simon was not their “ Peer; and therefore they were not bound “ to judge him as a Peer of the land. And “ when afterwards, in the same Parliament, “ they were prevailed upon, in respect of the “ notoriety and heinousness of his crimes, to “ receive the charge and to give judgment “ against him, the following protest and proviso “ was entered on the Parliament Roll. “ And “ it is assented and accorded by our Lord the “ King, and all the great men, in full Parliament, that albeit the Peers, as Judges of “ the Parliament, have taken upon them, in “ the presence of our Lord the King, to make “ and render the said judgment; yet the “ Peers, who now are or shall be in time to “ come, be not bound or charged to render “ judgment upon others than Peers; nor that “ the Peers of the land have power to do this, “ but thereof ought ever to be discharged and “ acquitted: and that the aforesaid judgment “ now rendered be not drawn to example or “ consequence in time to come, whereby the “ said Peers may be charged hereafter to “ judge others than their Peers, contrary to “ the laws of the land, if the like case happen, “ which God forbid.”—Rot. Parl. Vol. II. p. 53, 54. See this case, in the original language, with the opinion of the Judges

thereupon, in the Appendix to this Vol. No 10.—How far the conclusion drawn by Sir W. Blackstone from this case, which was a prosecution at the suit of the King, has been admitted to be law, with regard to prosecutions, brought before the Lords, by impeachment at the suit of the Commons, will appear from the great number of instances, which occur in the following part of this volume, (subsequent in point of time to this of Simon de Beresford in the year 1330) where Commoners have been impeached before the Lords for capital offences, and in which the Lords have not made this objection. Lord Holles, in his work, concerning the Judicature of the House of Peers, published in 1669, speaking of the case of Simon de Beresford, gives it as his opinion, “ That the protestation of the Lords, “ not to sit in judgment upon any but Peers, “ was a mere *Order* of the House of Lords, “ alterable at pleasure.”—On the 2d July, 1689, a doubt arose in the House of Lords, Whether this record of the 4th Edw. III. was a statute? And the question being put to the Judges, they answer “ As it appears to “ them by the aforesaid copy, they believe it “ is a statute; but, if they saw the Roll itself, “ they could be more positive therein.” It was then proposed to ask the Judges, Whether the Lords, by this statute, be barred from trying a Commoner upon an impeachment of the House of Commons? But the previous question being put, it passed in the negative. See farther what is said on this case of Simon de Beresford, under the next title, “ Judgment by the Lords,” No 1.—In the 1st Vol. of the Lords printed Debates, page 264, 294, and 296, is a pamphlet written by Sir William Jones, and published in 1681, in which this question is discussed, “ Whether, by the law “ and custom of Parliament, the Lords ought “ to try Commoners impeached by the Commons in Parliament?”

“ chattels,

“ chattels, forfeited to the King *.”—Rot. Parl. Vol. III. p. 238. et seq.

5. On the 12th of March, 1388, the Commons impeach Simon de Beverley, John Beauchamp, and several other persons, of high treason, for having (together with the Archbishop of York, Sir Robert Tresilian, Blake, and Usk, who had been in this present Parliament adjudged and attainted as traitors) imposed upon the tender age of the King, and encroached upon the regal power; and that they had been counselling, aiding, and abetting in those treasons, and † treasonable practices, for which the Archbishop of York, and the others had been attainted. To this accusation, they plead, Not Guilty. The Commons reply;—upon which, the temporal Lords took time ‡ to examine these accusations and impeachments; and after due deliberation, determined, that the said Simon de Beverley was guilty of the eighth article of impeachment, which had been adjudged treason in this Parliament, and judgment of treason was therefore pronounced against him §. And he was executed accord-

* See Parliamentary History, Vol. I. p. 432, and Petyt's Jus Parl. ch. viii. page 182. This judgment of death, pronounced against these Judges, appears afterwards to have been changed (*en mesme le Parlement ordine feust*) into perpetual banishment, to Ireland; some to Cork, some to Dublin, others to Waterford.—Rot. Parl. Vol. III. p. 244. N° 6. See the King's writ, dated 13th July, 1388, to the Sheriffs for transporting Holt, Belknap, and the others, to Ireland, and for their several accommodation there, “ *cum quadraginta marcis pro expensis suis, pro primo anno, uno lecto, vestura pro corpore suo, ac duobus familiaribus.*”—Rymer's Fœd. Vol. VII. p. 591.

† The accusation against Simon de Beverley, and the rest now impeached, consisted of sixteen articles, which see in the Rot. Parl. Vol. III. p. 241. et subs.

‡ This impeachment was brought up to the Lords on the 12th of March; they took time, first till the 20th of March, and afterwards till the 5th of May; during which time, the King, with the assent of the Lords, *adjourned the said Parliament* till the next Monday after the 15th day after Easter, “ *d'estre en mesme le lieu, et en mesme l'estat, come y feust a temps de mesme l'ajournement.*”—Rot. Parl. Vol. III. p. 243.

§ In consideration that Simon de Beverley had been in the service of the King, and was a Knight of the Garter, the King, with the assent of the Lords, remitted the “training and hanging,” and commanded, That he should be “beheaded” near the Tower of London.—Rot. Parl. Vol. III. p. 243.

ingly. The other impeached persons were also declared guilty of high treason upon different articles, and were executed *.

6. On the 20th of September, 1397, in the 21st year of Richard II. the Commons accused and impeached in full Parliament, Thomas Arundel, Archbishop of Canterbury, of High Treason, for having, whilst he was Chancellor, traiterously aided, procured, and advised the making out a commission, directed to the Duke of Gloucester, and others, of which himself was one ; which commission was made in prejudice to the King, and against his royalty, crown, and dignity ; and that he afterwards put the said commission into effect. They assigned another crime, That he procured the Duke of Gloucester, and the Earls of Arundel and Warwick, to take upon them regal power. Upon which, the Commons prayed, That the said Archbishop might be put in safeguard. To which the King answered, That, because the said accusation touched so high a person, and “ a Peer of his Realm †,” he would be advised. But on the 25th of September, the Commons again prayed, That, as they had impeached and accused the said Archbishop of the said crimes, it would please the King to order such judgment against the said Archbishop as the case required. Upon which, the King recorded in Parliament, that the said Archbishop had come before him, in the presence of several Lords, and had confessed, that in the use of the said commission he had been mistaken ; and submitted himself to the King’s mercy. On which the King, and all the Temporal Lords, and Thomas de Percy ‡ (having sufficient power from the Prelates and Clergy of the Realm) adjudged and declared the crime committed

* See further upon this subject under the next title, “ Judgment by the Lords,” N° 3.

† He ought rather to have said, “ a Lord of his Parliament.”

‡ See in Coke’s 4th Inst. ch. 1. p. 4, a description of this Officer, under title, *Procu-*

ratores Cleri.—The copy of the Instrument, from the Archbishops of Canterbury and York, and the Prelates and Clergy of both Provinces, granting power to Thomas de Percy, Knight, to consent, in their name, to all matters and ordinances in Parliament, is inserted

committed by the Archbishop to be treason against the King, and the said Archbishop to be a Traitor. And it was thereupon awarded in full Parliament, That the said Archbishop should be

inserted in the Rolls of Parliament, 21 Richard II. N^o 9 and 10, and is as follows:—
 “ Item, mesme le Mardi les Communes monstrent au Roi, coment devant ces heures plusieurs juggements, ordenances, faites en temps des progenitours n^{re} S^r le Roy en Parlement, out este repellez et annulez, pur ceo q^l l'estat de Clergie ne feust present en Parlement, a la faillance des ditz juggements et ordenances: Et pur ceo prierent au Roi, q^l pur seurte a sa persone, & salvation de son Royaume, les Prelatz et le Clergie ferroient un Procureur, avec poair suffisant pur consentir en leur noun as toutz choses et ordenances a justifiers en cest present Parlement: et q^l sur ceo chescun Seign^r Esprituel droit pleinement son advis. Sur quoi les ditz Seign^{rs} Esprituelz severalement examinez se consentirent de committer le plein poair generalement a une lay persone, & nomerent en especial Mons^r Thomas Percy, Chivalier. Et sur ceo baillerent au Roy une cedula contenant leur dit poair; laquelle n^{re} S^r le Roy receust, et comanda la diste Mardi estre entrez de record en Rolle de Parlement. De quele cedula la forme s'ensuit: “ Nos, Thomas Cantuar' et Robertus Ebor' Archiepiscopi, ac Prelati et Cleres utriusque provencie Cantuar' et Ebor', jure Ecclesiarum nostrar' et Temporalium earundem habentes jus' interressendi in singulis Parliamentis Dⁿⁱ n^{ri} Regis et Regni Angliæ pro tempore celebrand', necnon tractand' et expediend' in eisdem quantum ad singula in instanti Parlamento pro statu et honore Dⁿⁱ n^{ri} Regis, necnon regalie sue, ac quiete, pace, et tranquillitate Regni judicialiter justificand' venerabili viro D^{no} Thome de Percy, Militi, n^{ram} plenarie committimus potestatem; ita ut singula per ipsum facta in pmissis perpetuis temporibus (rata) habeantur.”—Rol. Parl. Vol. III. p. 348. Bishop Burnet, in his History of the Reformation, Part II. p. 49, says, “ Upon the

“ whole matter, it is not certain, what was the “ power or right of these Proctors of the “ Clergy in former times; but it seems strange, “ that in this Parliament of the 21st Richard “ II. this should be the only time, that the “ Clergy are mentioned, as having a share in “ the legislative power.” Bishop Atterbury denies this position; and in proof of his contradiction refers to the Record in the 8th year of Henry IV. by which the Crown was settled on the heirs of the King, “ de consensu et avimento omnium Prælatorum Magnatum “ et Procerum, ac Cleri, et Communitatis “ Regni Nostri;” for, says Bishop Atterbury, “ it would be ridiculous to imagine that by “ Clergy, in this instrument, thus placed between the Lords and Lay-Commons, any “ other than the Convocation Clergy are intended.”

Atterbury's Rights, Powers, and Privileges of the Convocation, p. 62, 63. and 370.

On referring to the Record, cited by Bishop Atterbury, of the 7th and 8th Henry IV. which is printed in the Rol. Parl. Vol. III. p. 580. N^o 60, intituled, “ L'inheritance de “ la Couronne,” it does not appear, that any other of the Clergy were parties to that Instrument, than the Bishops and Mitred Abbots that had seats in Parliament. The names of all the Lords, Spiritual and Temporal, who signed the deed, and of Sir John Tybetot, Speaker for the Commons, are there entered. It seems therefore as if these *Procuratores Cleri* were *Lay-Persons* appointed by the Bishops and Abbots having seats in Parliament, with authority to act, for them and in their name, on questions, where, as in matters of blood, they were restrained by the Ecclesiastical Canons, and by the Constitutions of Clarendon, from being personally present. The Canon, by which this restriction was ordained, “ That

be banished out of the Realm of England, during the King's pleasure, his temporalities seized, and his goods and chattels forfeited to the King.—Rot. Parl. Vol. III. p. 351. N^o 15 and 16.

7. On the 28th of January, 1397, in the 21st year of Richard II. the Commons, in the Parliament held at Shrewsbury, accused and impeached Sir John Cobham of certain Crimes and Misdemeanors committed by him in prejudice to the King, and against his Royalty, Crown, and Dignity. To this impeachment Sir John Cobham pleaded, Not Guilty ; and shewed, that the crime for which he was accused, viz. the issuing a Commission, by virtue of which several persons had been tried and executed, was done, as he understood, by the King's command. To which it was answered, on the part of the King, That he was at that time in such hands, and under such restraint, that he could not say otherwise—and that Sir John Cobham knew that this Commission was against his will.—To this Sir John Cobham made no reply. Whereupon the Commons demanded judgment against the said Sir John Cobham, as convicted and attainted of using and executing the said Commission, and of the judgment and award, which he had thereupon given against certain persons. Whereupon the Duke of Lancaster, by command of the King, and all the Temporal Lords, and of the Earl of Wiltshire * (having sufficient authority from the Prelates and Clergy of the Realm) awarded, That the said Sir John Cobham be attainted and convicted as aforesaid, and adjudged him a Traitor to the King and Kingdom, and that he should be drawn, hanged, beheaded, and quartered ; and that all his manors, lands, tenements, &c. should be forfeited to the King. This judgment, as far as it concerned his life, the King was pleased to remit, and to pardon ; but that he

" That no Bishop, Abbot, or Clergyman
 " should judge any person to the loss of life or
 " limb, or give his vote or countenance to
 " any others for that purpose," was passed in

a National Council held at London, in the 9th
 of William the Ist, in the year 1075.

Carte's History of England, Vol. I. p. 430.

* See the preceding note.

should remain a perpetual prisoner in the Isle of Jersey for his life ; on condition, that, if he made his escape from thence, the judgment of Death should then be executed upon him. And it is awarded by all the Estates in Parliament, That the lands and tenements of which Sir John Cobham should stand infeoffed to the use of other persons, should not on account of this judgment be forfeited.—Rot. Parl. Vol. III. p. 381, N° 10 *.

8. On the 7th of February, 1450, in the 28th year of Henry VI. the Commons, by William Tresham, their Speaker, accuse and impeach William de la Pole, Duke of Suffolk †, of certain

* See also Parliamentary History, Vol. I. p. 484.

† Prior to this proceeding, viz. on the 22d of January, the Duke of Suffolk, having, in the presence of the Lords, desired, on account of the infamy and defamation that is said against him by many of the people of the land, That if any person would say it specially, he might make his answer ; and that his Protestation might be inrolled in the Rolls of Parliament ; this was accordingly done. The Commons, on the 26th of January, sent a message to the Chancellor, desiring that he would let the King have knowledge of what the Duke of Suffolk had alleged ; and that it would like the King to commit him to ward, after the course of the law.—This being communicated by the Chancellor to the King and Lords in the Council Chamber, the Lords were asked, What should be done upon this request of the Commons, and whether the said Duke should be put to ward or not ?—And it was asked of the Judges, What the law would in this matter, that the King and the Lords might have knowledge of the law ? To which the Chief Justice of the King's Bench declared for all his fellows, and said, “ That in “ these general terms, ‘ Rumour, and noise of “ Scandal and Infamy,’ many things might “ be understood, i. e. Misprision or Trespases

“ —for which causes it needeth not to commit
“ him to ward ;—or else Felonies or Trea-
“ sons.—And soasmuch as the words were
“ general, and nothing in especial declared,
“ he would commune with his fellows, and
“ bring an answer, what the law therein wills
“ after her conceytes.”—And afterwards, all
the Lords, from the lowest to the highest,
held in manner one opinion : ‘ That, for cause
there was no “ special matter ” of Slander and
Infamy put upon him, he should not be com-
mitted to ward till the specialty was declared
and shewed.’—But on the 28th of January,
the Commons coming again, and declaring
certain specific crimes against the said Duke ;
and the Speaker, in the name of all his Fel-
lows, praying the Chancellor and Lords to
open the same to the King, and that it would
like him to commit the said Duke to the
Tower, during the said Court of Parliament ;
until he may declare himself of the said mat-
ter ; and of other things, that shall be put upon
him ; “ as it is thought by all their wisdoms,
“ that they have declared special matter
“ enough of suspicion of Treason against the
“ said Duke for to commit him to ward ”
—upon this, the said Duke was committed to
the Tower to ward. Rot. Parl. Vol. V. p.
176, N° 14 to 17.

High Treasons, and also of offences and misprisions, committed by him against the King's Majesty, as in a Bill, containing certain articles, is more fully set forth; which Bill the Commons by their Speaker delivered to the Chancellor and Lords; and the Commons desired that the said Duke might be proceeded against, upon the said articles, in Parliament, according to the laws and custom of England.—The articles are then set forth, stating several acts of High Treason. After which, on the 9th of March, the Commons deliver in further articles, accusing the said Duke of malversation in office, and several High Crimes and Misdemeanors*. On the same day, the 9th of March, the Duke was brought from the Tower, into the presence of the King, and the Lords Spiritual and Temporal, in the Parliament Chamber; and the accusations and impeachments made against him by all the Commons in Parliament were declared to him.—He desired copies of the several articles, which were allowed him; and, that he might be nearer, and more ready to come to his answer, the King, by the advice of the Lords, committed him to the ward of certain persons, to be by them kept in a tower in the Palace of Westminster. On the 13th of March, he is again brought

* It may be curious to see what the misdemeanors were, for which this powerful Minister was accused by the Commons, almost 350 years ago. There were eighteen articles. 1. Malversation in his office as Lord Steward of the Household. 2. Advising the King to grant liberties and privileges to certain persons, to the hindrance of the due execution of the laws. 3. Advising the grant of a peerage, and great lordships and possessions, to the husband of his niece. 4. The granting away other great offices and possessions in the province of Guienne. 5. Discovering the King's secret counsils to the French King. 6. Procuring offices for persons who were unfit, and unworthy of them. 7. Procuring of grants of tributes and impositions to several persons. 8. And of Earldoms and Lordships. 9. Making a convention of peace without the knowledge or

assent of the other Lords of the Council. 10. Misapplying the subsidies to other purposes, than those to which the Commons had granted them. 11. Giving large sums of money to the French Queen. 12. Squandering away the public treasure. 13. Obtaining the inheritance of the earldom of Pembroke, and great wards and marriages. 14. Embezzling several obligations for sums due to the King from the Duke of Orleans. 15. Delaying of justice, in stopping the execution of writs of appeal of several women, for the deaths of their husbands. 16. Procuring a pardon for a person appealed for murder. 17. Making of sheriffs for money, and that might be favourable to his purposes in their several counties. 18. Assisting the Dauphin of France with soldiers, against the King's allies in Germany.—Rot. Parl. Vol. V. p. 179.

in;

in; and with respect to the Treasons charged against him, he denied them utterly; and with regard to some of the other articles, he delivers in special answers. Upon the 17th of March, the King sent for all the Lords, both Spiritual and Temporal, then in town, into his Palace of Westminster, and also for the Duke of Suffolk; who kneeling, the Chancellor, by the King's command, putting him in mind of his answers and declarations to the accusations and impeachments of the Commons, and, as at that time he did not put himself upon his Peerage, the Chancellor asked, What he would now say further upon that subject? the Duke answering, That, with respect to the said articles, he thought he had answered them sufficiently, having denied the days, the years, the places, the communications had, and saying utterly they were false and untrue; he therefore submitted himself wholly to the King's rule and governance, to do as to him should seem proper.—Whereupon, the Chancellor, by the King's command, replied, That as to the first accusations of Treason, in the first Bill comprised, the King held him neither declared nor charged.—And as to the Misprisions, contained in the second Bill, the King, by force of his submission, by his own advice, and not reporting him to the advice of his Lords, nor by way of judgment—for he is not in the way of judgment—declares, that he shall, before the 1st of May next, absent himself out of the realm; and shall so continue for five years from the said 1st day of May*.

Whereupon the Lord Beaumont, on the behalf of the Lords Spiritual and Temporal, and by their advice, assent, and desire, re-

* " The Duke of Suffolk went, full of hopes
" of being recalled as soon as the fury of the
" nation, or the heats of Parliament, were
" over: but being taken at sea, the day after
" he sailed from Ipswich towards Flanders, by
" a ship of war, called *The St. Nicholas of the*
" *Tower*, the Captain of it put into Dover

" Road, cut off his head on the 2d of May,
" and threw it with his body on the sands;
" whence they were conveyed to the Colle-
" giate Church of Wingfield, in Suffolk, and
" there buried."—*Carte's History of Eng-*
land, Vol. II. p. 738.

cited and declared, That this judgment proceeded not by their advice and counsel, but was done by the King's own demeanance and rule. — And therefore besought the King, that this their saying might be enacted in the Parliament Roll, with this Protestation, "That it should not be, nor turn in prejudice nor derogation of them, their heirs and successors, but that they may have and enjoy their liberties and freedom, in case of the Peerage hereafter, as ever they, or any of their ancestors, had and enjoyed before that time." — Rot. Parl. Vol. V. p. 177, N° 18 to 51 *.

O B S E R V A T I O N S.

Upon IMPEACHMENT BY THE COMMONS.

It was not till towards the end of the Reign of Edward III. that the House of Commons took upon themselves the character of accusers, before the Lords, of persons charged with Treason, or other High Crimes and Misdemeanors against the State. — Though there are several instances upon the Rolls of Parliament, previous to the case of Richard Lyons in 1376, of judgments pronounced by the Lords†, as well against Peers as Commoners, for great public offences, yet these proceedings appear to have been instituted, either

* See also Parliamentary History, Vol. II. p. 255.

† See, under title, "Judgment by the Lords," N° 1, the case of Earl Mortimer, and Simon de Beresford; and under title "Bills of Pains and Penalties," N° 2. — I think Reeves, in his History of English Law, Vol. II. p. 35, is mistaken in supposing the accusation against

Sir John Lee to have been by the Commons; as it appears from the Rot. Parl. Vol. II. p. 297, to have been at the suit and by petition of William Latimer to the King and Council. — See this case of Sir John Lee in this Vol. 1st Part, under title "Bills of Pains and Penalties," N° 2.

from the Crown itself, or at the prayer of private persons, who found themselves aggrieved by the Officers of the Crown in high trust and power, and against whom they had no other redress than by application to Parliament.—From the time that the Commons became parties in these prosecutions, the instances were frequent, in which they found themselves obliged by their duty to carry up complaints to the Lords, against persons of the highest rank and favour with the Crown; or against those in judicial or executive offices, whose elevated situation placed them above the reach of complaint from private individuals, who, if they failed in obtaining redress, might afterwards become the objects of resentment of those, whose tyrannical oppressions they had presumed to call in question. This circumstance, therefore, of the Commons assuming this invidious office, and, as the representatives of the people at large, standing forwards as the prosecutors of the highest and most powerful offenders against the State, forms a remarkable æra in the history of the criminal jurisprudence of this country: it has certainly very much contributed, in this kingdom, to controul and repress those acts of injustice and oppression, which, in more despotic governments, Ministers, protected by their great rank, and overbearing power, are but too apt to exercise against persons who presume to offend them; and has been the means of bringing to condign punishment those “great Apostates to the Commonwealth,” who, by their actions or counsels, have endeavoured to subvert the fundamental laws of their country, and to introduce an arbitrary and tyrannical government.

The crimes for which, during this period from 1376 to 1450, the Commons impeach, are, Misdemeanors, committed by persons employed by the Crown, either at home or in its foreign possessions—Mal-administration of justice, and extra-judicial conduct, in the Judges of the realm—Treason, or treasonable practices, not specifically mentioned in the Statute of 25th Edward III. but
by

by a clause in that Act expressly reserved for the determination of Parliament *.

The forms of proceeding, even in these early instances, particularly in the case of the Duke of Suffolk, in 1450, were much less different from the present, than what at periods so distant might be expected.—The articles of charge are carried up by the Commons, and delivered by the Speaker to the Chancellor and Lords; further articles are afterwards exhibited. When these charges are read to the Duke, who was brought in custody from the Tower for that purpose, copies of them are, at his request, allowed to him—he then pleads, Not Guilty, by denying the truth of the matters alleged against him †.

And, with respect to the rules by which the Lords then considered themselves as bound to try and determine questions of Impeachment brought before them by the Commons—they resolve, in the case of Belknap and the other Judges, “ That these matters, “ when brought before them, shall be discussed and adjudged by “ the course of Parliament, and not by the civil law, nor by the “ common law of the land used in other inferior courts.”

It seems remarkable, that no instances of Impeachment occur, during the reigns of Edward IV. Henry VII. Henry VIII. Ed-

* The Statute, 25th Edward III. stat. 5th. ch. 2. intituled, “ A Declaration which Offences shall be adjudged Treason,” after reciting the several offences which constitute Treason, goes on; “ And because that many other like cases of Treason may happen in time to come, which a man cannot think or declare at this present time—it is accorded, That if any other case, supposed Treason, which is not above specified, doth happen before any Justices, the Justices shall tarry, without any going to judgment

“ of the Treason, till the cause be shewed before the King and his Parliament, whether it ought to be judged Treason or other Felony.”—See Coke’s 3d Inst. ch. 2. p. 22. —See also further upon this proviso, in the subsequent case of Lord Strafford.

† The course of this proceeding was here interrupted by the interference of the King, who banished the Duke of Suffolk for five years, not however without a Protest from the Lords, “ saving their Rights and Liberties, and Privilege of Peccage.”

ward VI. Queen Mary, and Queen Elizabeth, nor till the 17th year of James I. Nor can this be accounted for in any other manner, than that, during this period, Bills of Attainder, and Prosecutions in the Court of Star Chamber, were substituted in their stead.—The new modelling of the Star Chamber * by Henry VII. in the 3d year of his reign, and the supplementary Statute of the 21st Henry VIII. ch. 20, transferred to this Court the trial of all those

* See Lord Bacon's account of this in his History of Henry VII.—“ This Court,” he says, “ is one of the sagest, and noblest institutions of this kingdom ;—for in the distribution of courts of ordinary justice, (besides the High Court of Parliament) in which distribution the King's Bench holdeth the Pleas of the Crown; the Common Pleas, Pleas Civil; the Exchequer, Pleas concerning the King's Revenue; and the Chancery, the Pretorian Power for mitigating the Rigour of Law, in case of extremity, by the conscience of a good man; there was nevertheless always reserved a high and pre-eminent power to the King's Council, in causes that might, in example or consequence, concern the state of the Commonwealth; which, if they were criminal, the Council used to sit in the chamber, called The Star Chamber; if civil, in the White Chamber, or White Hall.—And, as the Chancery had the Pretorian power for equity, so the Star Chamber had the Cenforian power for offences under the degree of capital.—The authority of this Chamber, which before subsisted by the ancient common laws of the realm, was now confirmed in certain cases by Act of Parliament.”—Bacon's Works, Vol. II. p. 290.—Lord Clarendon, in speaking of the abolition of this Court in 1641, says, “ Thus fell this High Court, a great branch of the Prerogative; having rather been extended and confirmed, than founded, by the Statute of the 3d year of King Henry VII. For, no doubt, it had both a being and a

jurisdiction before that time, though vulgarly it received date from thence; and, whilst it was gravely and moderately governed, was an excellent expedient to preserve the dignity of the King, the honour of his Council, and the peace and security of the kingdom.—But the taking it away was an act very popular; which, it may be, was not then more politick, than the reviving it may be thought hereafter, when the present distempers shall be expired.” History of the Reb. Vol. I. p. 223. Book 3d.—Another great Statesman, Lord Somers, describes this Court of Star Chamber, as follows: “ We had a Privy Council in England, with great and mixed powers; we suffered under it long and much: All the Rolls of Parliament are full of complaints and remedies; but none of them effectual till Charles the First's time. The Star Chamber was but a spawn of our Council: and was called so, only because it sat in the usual Council Chamber. It was set up as a formal Court in the 3d year of Henry VIIIth, in very soft words, “ To punish great riots—to restrain offenders too big for ordinary justice—or, in the modern phrase, to preserve the public peace.” But in a little time it made this nation tremble: The Privy Council came at last to make laws by proclamation; and the Star Chamber ruined those that would not obey. At last, they fell together, but not without endangering the nation.”

*Lord Hardwicke's State Papers,
Vol. II. p. 473.*

Misdemeanors, which would otherwise have become the object of Parliamentary prosecution by Impeachment; and, as is well expressed by a learned writer * on this subject, “ This Court became “ the happiest instrument of arbitrary power, that ever fell under “ the management of an absolute sovereign.—The Star Chamber “ exercised a criminal jurisdiction almost without limitation, and altogether without appeal; taking upon it to judge and animadvert “ upon every thing, in which Government felt itself interested. “ —It became in truth as much a Court of State, if the expression “ may be allowed, as a Court of Law.”—By this extension of its jurisdiction, and the severity of its penalties, it for a time superseded the exercise of the more legal proceeding in Parliament against similar offences, by Impeachment for High Crimes and Misdemeanors.—The more atrocious offences of Treason, and treasonable practices against the State, were, during this period, prosecuted and punished by Bills of Attainder; which, though very rare till the reign of Edward IV. became, during that reign and those of his successors †, the common mode of proceeding against persons accused of such crimes.

* Reeves's History of English Law, Vol. II. Part 2d, ch. 15.

† The reign of Queen Elizabeth should be excepted out of this remark.

II. *Judgment by the Lords.*

1. **T**HE Judgment, which passed in the year 1330 against Earl Mortimer, was upon articles of accusation, charged at the suit of the King; and, as appears from Rot. Parl. Vol. II. p. 53, N° 1, was given by the Earls, Barons, and Peers of the Realm, "as Judges of the Parliament."—But, when, in the same Parliament, Simon de Beresford is charged by the King in aiding and advising with the said Earl Mortimer in the said Treasons and Felonies, the said Earls, Barons, and Peers, came before the King in Parliament, and said, "That the said Simon was not their Peer, and therefore they were not bound to judge him, as a Peer of the land *."

2. In the 1st year of Richard II. on the 22d of December, 1377, Alice Perrers, who had been mistress to the old King, Edward

* This accusation against Simon de Beresford was at the King's suit. Rot. Parl. Vol. III. p. 53, N° 4.—Notwithstanding the declaration of the Lords, they afterwards condemn the said Simon de Beresford and others, not Peers, to be executed for the said Treasons and Felonies—But immediately declare, "That, though they had for this time proceeded to give judgment upon those that were no Peers, hereafter these judgments should not be drawn into example or consequence, so that they should be called upon to judge others than their Peers, contrary to the law of the land." Rot. Parl. Vol. II. p. 54, N° 6.—In the 29th ch. of Magna Charta, 9th Henry III. it is said, "Nec super eum ibimus, nec mittemus, nisi per legale iudicium parium suorum, vel per legem terre." That is, says Sir Edward Coke, 2d Inst. p. 46.

"No man shall be condemned at the King's suit, either before the King in his Bench, where the Pleas are, *Coram Rege*, (and so are the words, *nec super eum ibimus*, to be understood) nor before any other Commissioner or Judge whatever, (and so are the words, *nec super eum mittemus*, to be understood)." And again, 2d Inst. p. 48, in commenting upon the words, "*Per iudicium parium suorum*," Sir Edward Coke says, "Note, as is before said, That this is to be understood, of the King's suit; for if an appeal be brought against a Lord of Parliament, which is the suit of the party, there he shall be tried, not by his Peers, but by an ordinary Jury: For that this statute extendeth only to the King's suit."—So in the Lord Dacre's case, in the 26th of Henry VIII. on a question, Whether he might waive his trial

by

ward III. was charged before the Lords*, of having incurred the penalties of forfeiture and banishment, inflicted by an ordinance made in Parliament in the 50th year of the late King, against such women, and particularly against her the said Alice Perrers, as should, by way of maintenance, pursue matters and suits in the King's Courts †.—Witnesses to these facts were examined before the Lords, and Alice Perrers was heard in her defence; and being found guilty, and the Lords present averring, that it was meant, That the ordinance in question should have the force of a statute—it is awarded in Parliament, that the said ordinance should have the said force and effect; and that thereby the said Alice should be banished out of the kingdom, and her lands, chattels, tenements, and possessions seized and forfeited to the King.—But that it is not the intention of the King or Lords, that the ordinance or award, made in this special case, should in any other case be drawn into example.—Rot. Parl. Vol. III. p. 12. N° 41.

by his Peers, and be tried by the Country, the Judges all agreed, that he could not, "For the Statute of Magna Charta is in the negative, *Nec super eum ibimus, nisi per legale judicium parium suorum*, that is, *at the King's suit upon an indictment*." Kelyng's Rep. p. 56. And, in the Tract cited before in the note, p. 54, Sir William Jones says, "It is evident from the Roll itself, in the case of Simon de Beresford, and the other Records, that the Lords did judge those Commoners contrary to the law of the land, that is, *at the instance of the King*; so that judgment was given *at the King's suit*, in a way not warranted by the law and custom of Parliament, or any other law of the kingdom: but there is not a word in that Record, which imports a restriction of that lawful jurisdiction, which our Constitution placeth in the Lords to try Commoners, when their cases should come before them *law-*

fully, that is, *at the suit of the Commons* by "Impeachment."

*Lords Debates, printed in 1742,
Vol. I. p. 297.*

* This accusation was brought forward before the Peers by Sir Richard Scroop, Steward of the King's Household, and, as Prynne observes, in Cotton's Abridgment, p. 158, "The record is strange, and worthy of sight."—See also in Rot. Parl. Vol. III. p. 10, N° 38, et subseq. as strange a proceeding, where the Lords pronounce judgment of death against Le Sire de Gomenis and William Weston, for having surrendered the Fortresses of Arde and Outrewyck to the enemy, of which they had the custody.—And in the same Vol. of the Rot. Parl. p. 152, N° 15 to 25—the proceedings against the Bishop of Norwich, for breach of trust, and selling the Castle of Gravelines to the French.

† See this ordinance in Rot. Parl. Vol. II. p. 329. N° 45.

3. In 1388, there are several proceedings before the Lords against the Archbishop of York, and other great officers, and against several of the Judges* for having given extra-judicial opinions, and misinterpreting the law†.—Upon which, after a very long and accurate examination, judgments of Treason are given against them, as Traitors to the King and Kingdom‡.—Rot. Parl. Vol. III. p. 229. et subf.

4. The

* See before, p. 53, of this Vol. N° 4; and Parliamentary History, Vol. I. p. 414.

† In the course of this proceeding, the Judges, Serjeants, and other sages of the law of the realm, and of the civil law, were charged by the King, to give their faithful advice to the Lords of Parliament, how they ought to proceed in this matter.—Which Judges, Serjeants, and sages of the law of the Realm, and also the sages of the civil law, deliberated, and answered to the Lords in Parliament, “That, having seen and well understood the tenor of the said appeal, they declared, it was neither brought nor affirmed according to the order, which either the one law or the other required.”—To this the Lords, having taken deliberation and advice, answer, “That, in so high a crime as is laid in the said appeal, touching the person of the King and the estate of the Realm, perpetrated by persons who are Peers of the Realm, with others, *the cause cannot be tried elsewhere than in Parliament, nor by any other law, than the law and course of Parliament.*—“And that it belongs to the Lords of Parliament, by ancient custom of Parliament, to be Judges in such cases.—For that the Realm of England is not, nor ever was (nor is it the intent of the King or Lords of Parliament that it ever shall be) ruled or governed by the civil law.—And therefore their intention is, not to rule or govern so high a cause as this appeal is, (and which cannot be tried or terminated but in Parliament) by the course, process, or order used

“in any inferior court or place; which courts or places are only the executors of the ancient laws and customs of the Realm, and of the ordinances and establishments of Parliament.”—Rot. Parl. Vol. III. p. 236.—Lord Chancellor Nottingham, speaking of the difference between “Appeals and Impeachments,” says, “An appeal of murder, because the King cannot pardon it, is an odious suit in law, and is tied to more strictness and formality than any other suit whatever,—on the contrary, an impeachment in Parliament must not be called an odious proceeding, *nor is tied to any of the terms of the Civil or Common Law*; as was said by the Lords appellants in the reign of Richard II.”

Treatise on the King's power of granting pardons in cases of Impeachment, by Henrice Earl of Nottingham, Lord High Chancellor, p. 19. Printed for T. Payne, 1791.

‡ Petyt, observing upon the punishments inflicted on these Judges for extra-judicially misinterpreting the law, says, “Thus we see, that the execution of Tresilian, Blake, and Ulsk, and the rest, together with the perpetual banishment of the other Legicides, did, for several following generations, serve as an excellent Almanack for the meridian of Westminster Hall, and a *Circumspecte Agatis* to many succeeding Judges, until about the end of Queen Elizabeth's reign.” Jus Parl. Ch. viii. p. 211. In a pamphlet, published in 1791, intitled, “A Review of the Arguments in favour of the Continuance
“ of

4. The proceedings in the foregoing instance, and the judgment of Treason pronounced by the Lords, against the persons accused of the crimes there alleged, induced the Commons, at the close of that Session of Parliament, to petition the King, "That, whereas
 " divers points had been declared for Treason in this present Parliament, which were not declared by statute before, no Justice
 " should have power to give judgment in other cases of Treason,
 " nor in any other manner, than they had before the beginning
 " of this present Parliament;" which petition the King granted in all its points*.—Rot. Parl. Vol. III. p. 250. N^o 38.

" of Impeachments, notwithstanding a Dissolution," there are, in p. 119, the following judicious observations, very applicable to this subject. "The advantage, which Impeachments afford, as a check and terror to bad Ministers, is so obvious and so great, that it almost solely engrosses the attention, and is considered as the principal, if not the only recommendation, of that mode of prosecution; but there is an additional reason, why it ought to be cherished by Englishmen; which is, that it furnishes the most effectual preservative against the corrupt administration of justice; and it ought perhaps, upon experience, to be dearer to us upon this ground, than upon any other, as it has been employed with less mixture of vindictive, or unwarrantable motives, when directed to this object, than when its terrors have been levelled against Favourites and Ministers.—That Ministers are not now violating the principles of the Constitution, or that the administration of justice is now free from the slightest stain or suspicion of corruption, furnishes no reason for abolishing this mode of trial; for it is impossible to know, how much of the security, with which we now

" enjoy our Constitution and Liberties, and
 " how much of the satisfaction, with which we
 " now confide in those unsuspected characters,
 " that now grace the seats of justice, may be
 " derived from the existence of this very institution; the benefit of which (since prevention is more desirable than punishment)
 " cannot be more conclusively proved by any
 " means than by the few occasions there have
 " been of late for exerting it."—When the Lords are about to pronounce judgment on these Judges and other persons accused, the Archbishop of Canterbury, in his own name and that of his clergy, enters a protestation, desiring leave to be absent. The Bishops of Durham and Carlisle do the same. This protest is recorded, and all the Lords Spiritual retire out of the Hall. Rot. Parl. Vol. III. p. 236.

* So in the 21st year of Richard II. 1397, Thirning, Chief Justice of the Common Bench, says, "That declaration of Treasons, not already declared, belongs to the Parliament."—Rot. Parl. Vol. III. p. 358. See the stat. 1st Henry IV. Ch. x. which was made in consequence of the proceedings in Parliament in the 21st year of Richard II.

OBSERVATIONS

On JUDGMENT BY THE LORDS.

The jurisdiction, which in ancient times was exercised by the High Court of Parliament, as well in civil as in criminal matters, is very well explained and illustrated in the History of the English Law * :—"In the reigns of Edward I. Edward II. and Edward III. we find records of proceedings in Parliament which incontestibly verify, what was observed before on the judicial character of the High Court of Parliament, and furnish materials for forming an accurate judgment of its judicature (whether civil or criminal) not only during this period, but, as we conjecture, through all the preceding reigns, up to the origin of the Norman Constitution.—The great extent of their authority in judicial matters, seems owing to the idea of superintendence and supremacy, attributed to the Parliament by the people: it was thought that this assembly was to redress all wrongs, to remedy all abuses, and to remove all difficulties, with which any man was pressed, either in his person or property. In consequence of this opinion, at every meeting of Parliament petitions poured in from all quarters †, not only upon subjects of public and national concern, but for relief in private matters; and it appears from the Rolls of Par-

* Reeves's History of the English Law, Vol. II. part. 2. ch. x.

† It was to obviate the complaints which arose from a delay of justice, and the inconvenience that the public experienced from Parliaments not being holden every year, to whom these petitions might be addressed, and from whom only relief was to be obtained, that the ordinance of the 5th of Edward II. was

made, which directs, "That the King shall hold a Parliament once in every year, or twice, *si mestier soit*;" which ordinance was afterwards enforced by the statutes of the 4th and 36th of Edward III.—See upon this subject, the Note to Vol. II. of this Work, p. 276.—The Dictionnaire de Trevoux, explains the word "*mestier*" sometimes to mean *Opus*, *Necessitas*, but adds, "*Il est vieux en ce sens.*"

“liament, that these petitions were exhibited by all sorts of persons, upon all sorts of matters, and to obtain every species of relief, which the petitioners thought most desirable in their situation. —To distinguish between those, which were properly within the cognizance of the Parliament, and those that were not; and in order that those which belonged properly to other courts might be duly remitted thither; certain Prelates, Earls, Barons, and others, were appointed in every Parliament to be * Receivers and Tryers of petitions†.—These were to examine all Petitions, and, upon full consideration, to indorse upon them what course was to be pursued to redress the petitioner, and to direct him,

* I apprehend this not to be very accurately stated.—The persons who were appointed *Receivers* of petitions, were some of the Masters in Chancery, and of later times some of the Judges, attending upon the House of Lords.—The *Tryers* only were Prelates and Peers.—This form of appointing Receivers and Tryers of petitions from Great Britain and Ireland, and also from Gascony, and the countries beyond the Seas, and the Isles, is still observed upon the commencement of every Parliament.—There is a chapter in Elsyng’s *Manner of holding Parliaments*, upon this subject of Receivers and Tryers of Petitions, Ch. viii. p. 262.—On the 27th of October, 1705, after Queen Anne’s speech from the Throne, the Lords order, “That the names of the Receivers and Tryers of Petitions be entered, according to ancient custom.” It appears as if this form had been disused, ever since the Revolution.—See the 6th of November, 1707, and the 18th of November, 1708, from which time, it has been constantly observed, at the commencement of every Parliament.—See Coke’s 4th Inst. p. 10. “*Petitions in Parliament*.”—On the 19th of January, 1740, the House of Lords are moved, “That the entry, in the Journal, at the beginning of the Parliament, of the names of the Receivers and Tryers of Petitions in French, might be

“read.” And the same being read, a motion is made, on the 28th of January, “to order, That after the end of this present Parliament, no entry be made in the Journals of this House, of any appointment of Receivers or Tryers of Petitions for Great Britain and Ireland.” The question being put, it was resolved in the negative. See, in Sir Matthew Hale’s *Jurisdiction of the House of Lords*, Ch. xii. “Concerning the Auditors and Tryers of Petitions.”

† On the 1st of May, 1689, Lord Huntingdon acquaints the House of Lords, “That he was ordered to report from the Committee of Privileges, That they, finding the statute of the 14th of Edward III. ch. 5, intituled “*Delays of judgments in other courts shall be redressed in Parliament*,” is still in force; by which statute it is enacted, “That at every Parliament shall be chosen a Prelate, two Earls, and two Barons, who shall have commissions from the King to hear, by petition, all complaints of delays or grievances done to them in the Chancery, King’s Bench, Common Pleas, and Exchequer.” Upon which, their Lordships having advised with Mr. Petyt, he delivered in a report in writing.” This report is read, and is entered in the Appendix to this Vol. N^o 4.

“according

“ according to the nature of his case, either to the full Parliament,
 “ or to the Council, the Chancery *, or to some of the other
 “ Courts.—It was not less common to petition Parliament in cri-
 “ minal matters; when the parties were directed to sue a writ of
 “oyer and terminer, or, as their case required, to take such other
 “ steps as the common law prescribed.—But criminal prosecutions
 “ were also instituted in Parliament by another way than by peti-
 “ tion †.—They were frequently brought forward by articles exhi-
 “ bited; but who were the persons appointed to exhibit such arti-
 “ cles, or to stand forth as prosecutors, does not in every instance
 “ appear. Towards the latter end of the reign of Edward III. the
 “ Commons took this burthen upon themselves; and among their
 “ other petitions began to exhibit accusations for crimes and mis-
 “ demeanors against offenders, who were thought to be out of the
 “ reach

* In Dugdale's *Origines Judiciales*, ch. 16. p. 37, it is said, “ There are not found any Bills or Decrees in Chancery, before the 20th Henry VI. Such causes, as, since that time, were heard in that Court, having been formerly determined in the Lords House of Parliament, as may be seen, from the number of petitions in Parliament of that nature, which are yet extant.”—See upon this subject, Sir Math. Hale's *Jurisdiction of the House of Lords*, ch. 4. p. 26; and ch. 5, p. 33, where he says, “ Many petitions, which by reason of the dissolution of Parliament could not be there determined, were referred, sometimes to the Council in general, and sometimes to the Chancellor; and this I take to be the true original of the Chancellor's jurisdiction in matters of equity; and what gave rise to that multitude of equitable causes to be there arbitrarily determined.”—See also ch. 6. p. 44. of that work, published in 1796, with Mr. Hargrave's Preface.

† There is a very curious case, of a criminal prosecution against Sir Thomas de Berkely, who was tried by a Jury of twelve Knights,

“ in full Parliament,” for the murder of Edward II. in Berkley Castle. He was acquitted of the murder; but, because he had appointed Gurney and others, who put the King to death, his keepers and servants in the said castle, a day is given him to appear “ in the next Parliament ” *de audiendo judicio suo*; and in the mean time he is committed to the custody of the Steward of the Household.—*Rot. Parl. Vol. II. p. 57, N° 16.*—Sir Math. Hale, in his *Jurisdiction of the House of Lords*, ch. 16. p. 91. mentioning this case, says, “ This Thomas de Berkely was unquestionably a Peer of the realm, and was summoned to, and sat in, divers Parliaments, before and after; yet, he waived his trial by Peers, & ponit se super patriam; the only precedent I ever saw of a trial of a Peer, by other than his Peers; and that by a Jury appearing at the Lords Bar in Parliament.”—I apprehend Sir M. Hale is mistaken in this state of the case. 1. The record expressly calls him *Thomas de Berkely, Miles*. 2. There is nothing in the Roll about waiving his trial by his Peers. 3. As soon as he pleads, *Not Guilty*, and puts himself *super patriam*,

“ reach of the law ; and in these prosecutions, the King and Lords
 “ were considered as the Judges *.”

From these sources, with the alterations and improvements in the state of the judicature of this country, which in the lapse of time have taken place, may be deduced that jurisdiction, which the House of Lords now exercise in civil causes †, upon appeals or writs of error from the inferior courts ; and in criminal questions, when brought before them, by presentment of the House of Commons, in the form of an impeachment.—When this impeachment, either for treason, or for high crimes and misdemeanors, is directed against a Peer, there has never been a doubt, but that the Lords have the sole

triam, the jury, *omnes milites*, appear, and after trial acquit him, of the fact charged—*Idco idem Thomas inde quietus*.

* Sir Mat. Hale, in commenting upon the old records, where judgments are said to be given *in pleno Parlamento*, says, “ It was always or most commonly the course, that, when the Commons accused or impeached, and the Lords were ready for judgment, the Commons had notice, and then came up with their Speaker, and demanded judgment, which the Lords gave by the mouth of their Speaker ; so that this might be said to be done *in pleno Parlamento*, both Houses being present ; and yet, the judgment itself is given by the Lords, though in the presence of the Commons, and thus far by their tacit consent, as being the accusers, and present at the judgment.” Jurisdiction of the House of Lords, p. 18.

† It appears from a great variety of instances, in the Rolls of Parliament, that the jurisdiction, exercised by the Lords, in civil cases, was not so confined as to be necessarily concluded within the session, or even within the term of the Parliament, in which the writ of error was brought.—See Rot. Parl. the case of William de Breouse, Vol. I. p. 148,

and several other instances, in Vol. III. p. 8, N^o 29—p. 58, N^o 19—p. 60, N^o 20—p. 75, N^o 19—p. 173, N^o 21—p. 187, N^o 15—p. 260, N^o 15 and 16—p. 289, N^o 22—p. 492, N^o 26—p. 552, N^o 31.—Rot. Parl. Vol. IV. p. 445, N^o 40.—These are but a very few of the cases, which may be found by consulting the Rolls, in which the proceedings were continued from Parliament to Parliament. See also in “ The Report from the Lords Committee, appointed to examine Precedents relative to the state of the Impeachment against Warren Hastings, Esq. brought up from the Commons, and proceeded upon in the last Parliament,” the third class of Precedents, with the Appendix. Sir M. Hale indeed says, speaking of some of these cases, “ I take it, that the granting or continuing of a superseatas by the Lords House, depending a writ of error, until the next Parliament, as it hath been sometimes done, was not consonant to law. For it would be an intolerable delay of justice ; for no Parliament possibly might be summoned in seven years ; and it were very unreasonable, that the plaintiff’s execution upon a judgment obtained should be so long delayed.” Hale’s Jurisdiction of the House of Lords,

sole and exclusive jurisdiction to hear and determine upon this accusation.—So if a Peer is indicted for Treason or Felony, he cannot be tried in the courts below, but the indictment must be removed by Certiorari, and the Lords must pronounce judgment of Guilty or Not Guilty,—But where a person, not a Peer of the Realm, has been impeached by the Commons before the Lords for Treason, or any capital offence, there a doubt has been sometimes entertained, whether, by the law of Parliament, the Lords have competent jurisdiction upon this subject; and in one instance * the Lords actually refused to proceed upon a trial of this nature, though, in several other cases, as well before as since, they have admitted their competency, and have acted accordingly.—The Commons, however, have at all times asserted it to be their legal right, to impeach any person, whether Peer or Commoner, for any crime against the State, whether capital or not; and in the only instance that has occurred, in which the Lords disputed this right, the Commons resolved, “ That
“ it is the undoubted right of the Commons, in Parliament assembled, to impeach before the Lords, any Peer or Commoner for
“ treason, or any other crime or misdemeanor: And that the refusal of the Lords to proceed in Parliament upon such impeach-

Lords, ch. 29. p. 168. The instances, however, in which the practice has been contrary to this doctrine of Sir M. Hale, are, from their antiquity and number, more than sufficient to decide that his opinion upon this point is not consonant to law.—This observation is made with the more freedom, as it appears from Mr. Hargrave’s Preface, p. ccxviii. “ That
“ this work of Sir M. Hale, though perfect-
“ ed, had not, at the time of his death, been
“ revised by him, after it was written.

* The single instance, that I find, in which the Lords have raised any objection to proceeding on the trial of a Commoner, upon an impeachment for a capital offence, is the case

of Fitzharris, in 1681, which is to be found in the subsequent part of this work. The case of Simon de Beresford, mentioned before in the note p. 54, was not upon an “ Impeachment by the Commons,” but “ a prosecution at the suit of the King;” and therefore falls within the distinction made by Sir Edward Coke, in his Commentary upon the 29th chapter of Magna Charta, cited before in the note, p. 67. The period, at which the instance happened of the impeachment of Fitzharris, and the circumstances attending it, render any arguments or conclusions, that may be drawn from that proceeding, of very little weight.

“ment, is a denial of justice, and a violation of the constitution of
“Parliaments *.”

This resolution on the part of the House of Commons, in the year 1681, grounded upon and supported by the great variety of instances, in which (as will appear in the course of this work) the Lords have exercised jurisdiction in Impeachments against Commoners for a capital offence; together with the proceedings of the House of Lords, since the Revolution, upon a similar question brought before them in 1689 †, by the impeachment of several Commoners (in which, after consulting precedents, and much deliberation, they resolved to proceed upon the impeachment) appears to be a full and complete determination, what the law of Parliament is upon this question ‡.

* See Journal, the 26th of March, 1681.

† See the Lords Journal, the 26th and 27th of June, and 2d of July, 1689, upon the impeachment of Sir Adam Blair, and others.

‡ See before, Note, p. 54 of this Volume.

—And see also a Note in this Volume, in the Second Chapter of Impeachment, under Title “Form of delivering the Charge,” in the case of Sir Robert Berkley, one of the Judges of the Court of King’s Bench.

III. *Bills of Attainder.*

1. **I**N the Parliament which met on the 13th of March, 1329, Edmund, Earl of Kent, uncle to Edward III. was attainted of high treason, and by the unanimous consent of his Peers adjudged to death *.—Parliamentary History, Vol. I. p. 198.

2. In the 21st year of Richard II. 1397, Thomas Mortimer being impeached and accused by the Commons of treason, and for that he was fled; It is ordered and established by the King, with the assent of all the estates of Parliament, that proclamation should be made, as well in England as in Ireland, that the said Thomas should surrender himself in his proper person within three months: and if he did not surrender, then to be convicted and attainted of all the treasons of which he is accused, and to be holden as a Traitor to the King and Kingdom †.—Rot. Parl. Vol. III. p. 351, N° 19.

3. In

* In a letter written by the King to the Pope, dated the 24th of March, 1330, which is to be found in Rymer's *Fœdera*, Vol. IV. p. 424—the King, after reciting the crimes of which the Earl of Kent had been accused, adds, "*Eisdem Comitibus, Baronibus, Magnatibus, et aliis de Communitate dicti regni ad Parliamentum illud congregatis, injunxit, ut super his discernere et judicarent, quod rationi et justitiæ conveniret; quicquid eum, concorde et unanimi sententia, tantumquam reum criminis læsæ majestatis, morti adjudicarunt.*" The mention of the Commons in Parliament being parties to the judgment, makes it appear, as if the proceeding was by Bill, and not by indictment, or any

other mode.—But see the account of this transaction more at large in Carte's *History of England*, Vol. II. p. 402.—This attainder was afterwards reversed in Parliament, at the prayer of Edmund, the son of the said Earl of Kent, and of his widow Margaret, for the causes assigned in their petitions.—Rot. Parl. Vol. II. p. 55, N° 11 & 12.

† It appears from another entry in the same Parliament, that, Mortimer not appearing according to the proclamations made both in England and Ireland, the Duke of Lancaster, and all the Lords Temporal, and the Earl of Wiltshire (having sufficient power from the prelates and clergy of England) with the consent of the King, adjudged, that the said

3. In 1453, the 31st year of Henry VI. a Bill of Attainder passed against Jack Cade and Sir William Oldhall *, for high treason, at the suit of the Commons †.—Rot. Parl. Vol. V. p. 265.

4. In 1459, the 38th of Henry VI. an Act of Attainder was passed against Richard Duke of York, and the Earls of Salisbury, Warwick, and others, by which they were declared, adjudged, deemed, and attainted of high treason, as false traitors, and enemies against the King's Person, Majesty, Crown, and Dignity.—To this petition of the Commons, which had been read in full Parliament, with the advice and consent of the Lords Spiritual, and Commons, in Parliament assembled, the royal assent is given in the following terms ;—" The King agreeth to this Act—so that by virtue
 " thereof he be not put from his prerogative to shew such mercy
 " and grace, as shall please his Highness, according to his regalie
 " and dignitee, to any persone or persones, whos names be exprest
 " in this Acte, or to any other that might be hurt be the same." But as to Richard Lord Powys, and Walter Devereux, herein named, " Le Roi s'advifera."—Rot. Parl. Vol. V. p. 346, et seq.

5. In the 1st year of Edward IV. 1461, an Act ‡ was passed to attaint several persons, who had taken part in the civil wars between the Houses of York and Lancaster, by which they were adjudged to be attainted and convicted of high treason.—Rot. Parl. Vol. V. p. 476.

said judgment made against the said Thomas should be effectual, and be in force, simply, and without condition.—Rot. Parl. Vol. III. p. 380, N° 9.

* This Sir William Oldhall had been Speaker of the former Parliament, in the 29th year of Henry VI.—Rot. Parl. Vol. V. p. 210, N° 6.

† The royal assent to the Bill against Jack Cade, is given in the usual form, " Le Roi
 " le veut." But to the Bill against Sir Wil-

liam Oldhall, it is, " The King volle that it
 " be hadde and doon in maner and fourme
 " as it is desired."—Rot. Parl. Vol. V. p. 266.

‡ This Act began in the House of Lords, and being sent to the Commons, they agreed to it in the form of words now used, " A
 " ceste Acte le Coez sount assentuz ;" and the royal assent was given, " Le Roy le voet."—Rot. Parl. Vol. V. p. 483.

6. On the 21st of January, 1464, in the 4th year of Edward IV. a Bill began in the House of Lords, by which Henry Somerset, Duke of Beaufort, and several persons therein named, were declared to be convicted and attainted of treason. To this Bill the Commons agree, and the King gives the royal assent. By this Act a proclamation is directed to be issued to the Sheriffs of London and York against several other persons, to appear at a particular time and place; and if they make default to appear, that then they should stand and be convicted and attainted of high treason, and incur the penalties thereof.—Rot. Parl. Vol. V. p. 511, et seq.

7. In the 14th year of Edward IV. 1475, an Act was passed* attainting several persons therein named of high treason, and subjecting them to the penalties thereof.—Rot. Parl. Vol. VI. p. 144.

8. In 1485, the 1st year of Henry VII. a Bill of Attainder was brought into the House of Lords against several persons that had taken part with Richard III. whereby the said persons are declared to stand, and be convicted and attainted of high treason, and disabled and fore-judged of all manner of honours, estate, dignity, and pre-eminence, and to incur the forfeitures attending the said crime.—To this Bill the Commons agree; and the King's assent is, "Le Roi le voet, en toutz pointz."—Rot. Parl. Vol. VI. p. 275, 278.

* See the preamble to this statute in the Rot. Parl. in which, after reciting the commotions and insurrections that had happened, and that had lately been repressed, and that the King, "movyd with benygntie and pite, and leiyng aparte the grete rigour of the lawe, hath graunted to dyvers persones his grace and pardon: yet considering that thos persones, whoos names been under writen, were grete and singuler movers, flirrsers, and doers of the said offenses and haynous

"treasons; and also to th' intent that benygntie and pite be not so exhalted, that justice be sett a parte, nor that justice so proceede, that benygntie and pite have no place, but that a dewe moderation and temperament be observed on every behalfe, as apperteyneth; and to eschewe the manifold and irreparable jeopardies and inconveniences, that else might and be like to followe"—the Bill enacts, &c.

9. In 1487, the 3d year of Henry VII. an Act of Attainder passed against John Earl of Lincoln, and several others, for the part they had taken, in setting up Lambert Symnell as King ;—for which it is enacted, that they shall be reputed, judged, and taken as traitors, and convicted and attainted of high treason.—*Rot. Parl. Vol. VI. p. 397.*

10. In the same year, the 3d of Henry VII. John Spynell, and others, having assembled, and having confederated, imagined, and compassed commotions, rumours, and insurrections, to have slain, murdered, and destroyed divers of the King's great officers, and other of his most honourable council—which malice and false purpose, if it had taken effect, would have caused not only the destruction of them, but have been also to the great jeopardy of all the Nobles of the realm * : It is therefore ordered by authority
of

* Before the passing of this Act, a general law had been made, in the same session of Parliament, whereby any of the King's servants, whose name was upon the cheque-roll of the Household, and who was under the degree of a Lord, who should make any confederacies, compassings, conspiracies, or imaginations, with any person, to destroy or murder the King, or any Lord of the realm, or any other person sworn to the King's Council, or Steward, Treasurer, or Comptroller of the King's house, such servant shall be put under enquiry by a jury of twelve sad and discreet persons of the cheque-roll of the King's Household ; and the said Steward, Treasurer, and Comptroller, or any two of them, shall have power to determine the said matter according to law. —And if he put him on trial, that then it be tried by other twelve sad men of the said Household ; and if such misdoers be found guilty, the said offence shall be judged felony, and they shall have judgment and execution, as felons attainted ought to have by

the common law.—*Stat. 3d Henry VII. ch. 14.*

See Sir Edward Coke's Commentary upon this statute, in the 3d Inst. ch. 4.—Although this general law stands upon the Parliamentary roll (N^o 26) before the particular Act against John Spynell and others (N^o 27) it should seem by some expressions in the preamble, that it was occasioned by the attempts of John Spynell and his adherents.—Lord Bacon observes, “ That this law was somewhat
“ of a strange composition and temper ; and
“ was thought to be procured by the Lord Chancellor (Morton, then Archbishop of Canterbury) who being a stern and haughty man, and finding he had some mortal enemies in Court, provided for his own safety ; drowning the envy of it in a general law, by communicating the privilege with all other Counsellors and Peers ; and yet not
“ daring to extend it farther than to the King's
“ servants in cheque-roll, lest it should have
“ been too harsh to the Gentlemen and other
“ Commons

of Parliament, that they the said John Spynell, and the other persons named, for the said offences be had, taken, and reputed as felons and stand and be convicted and attainted of felony, and shall forfeit, lands, goods, and chattels, as if they were convicted and attainted of felony after the course of the common law. To this Act the King assents—"Le Roi le voet."—Rot. Parl. Vol. VI. p. 402.

11. In 1489, the 5th of Henry VII. an Act of Attainder was passed against the Abbot of Abington, John Mayne, and others, for falsely and traitorously assembling, and conspiring and imagining the death of the King, and the subversion of his realm. Wherefore the said John Mayne and others, by authority of Parliament, are adjudged, deemed, and attainted of High Treason.—But it is provided, that this Act be not prejudicial nor hurtful to the King's royal prerogative, nor to the prejudice of the common law of the land*.—Rot. Parl. Vol. VI. p. 436, N° 38.

12. In the 11th year of Henry VII. 1495, an Act of Attainder was passed against Lord Lovell, for having been concerned with the Earl of Lincoln, in 1487, in traitorously imagining and compassing the death of the King, by an insurrection, by which Act Lord Lovell was deemed and adjudged convicted and attainted of High Treason†.—Rot. Parl. Vol. VI. p. 502.

13. The entries in the Journal of the House of Lords, of the

"Commons of the kingdom, who might have thought their ancient liberty, and the cleanness of the laws of England, invaded, if *the will*, in any case of felony, should be made *the deed*."—Life of Henry VII. Bacon's Works, Vol. II. p. 291.—Is it not remarkable, that such a law should be suffered to stand upon the Statute Book at this day unrepealed?

* See also the case of Sir Robert Chamberlayne, in the 7th of Henry VII.—Rot. Parl. Vol. VI. p. 455, N° 16.

† See also the proceedings against the persons concerned in Perkin Warbeck's Rebellion.—Rot. Parl. Vol. VI. p. 503, N° 39; and against Lord Audley and others, p. 544, N° 21.

Bill of Attainder * which passed against Empson and Dudley in 1509, the first year of Henry VIII. are very short, and not very intelligible.—Lords Journals, the 21st, 22d, and 23d of February, 1509.

14. In 1523, the 14th year of Henry VIII. an Act of Attainder † passed against the Duke of Buckingham, for certain Treasons for which he had been indicted, and tried by his Peers, in the 13th of Henry VIII. before Thomas Duke of Norfolk, Great Steward of England for the time, and had been found guilty, and executed.—This Act is inserted in the Rot. Parl. which are printed at the beginning of the first volume of the Lords Journals, p. cv.

15. In the same year, the 14th of Henry VIII. a general law was passed, to enable the King, during his life, by letters patent, at his pleasure, to reverse, repeal, and annul all Attainders of High Treason, whether by authority of Parliament or by the common law, that had been since the 22d of June, in the 1st year of Richard III. and to restore the said persons and their heirs, in name, blood, pre-eminence, and dignity, and in their castles, lands, tenements, &c. &c.; and that the said letters patent should have the same effect, as

* Lord Herbert, of Cherbury, in his History of the Life and Reign of Henry VIII. says, "That in the following year, Empson and Dudley, being now in prison, *condemned and attainted by Parliament*, the importunate clamours of the people prevailing with the King, he by a special writ commanded to have their heads cut off, on the 18th of August, 1510; doing therein, as thought by many, more like a good King than a good master."—Carte says, "That they were charged with a treasonable conspiracy against the Crown; as having in the last March, during the late King's illness, summoned certain of their friends, to be in arms at an hour's warning, upon the said King's de-

"cease, to make haste to London."—History of England, Vol. III. p. 4.

In the following year, a Bill was brought into the House of Lords, and was passed, for restoring to the heirs of Sir Edmund Dudley their possessions.—Lords Journals, Vol. I. p. 15.

† It does not appear what occasion there was for such an Act, unless what is suggested in Vol. III. of the Parliamentary History, p. 37, be true, "That Cardinal Wolsey, being publicly accused of having sacrificed this Nobleman to his vengeance, had interest enough to obtain this Act, in order to divert the odium thrown upon him for it."

if the said repeal and restitution had been enacted, established, and authorized by authority of Parliament *.

16. The articles which in 1529 were exhibited in Parliament against Cardinal Wolsey, are not entered in the Lords Journals, nor amongst the Rolls of Parliament printed in the first Volume of the Journal; but are to be found in Lord Herbert's History of Henry VIII. and are from thence transcribed into the Parliamentary History, Vol. III. p. 42 †.—They appear to have been drawn up by a Committee of Lords, of which Sir Thomas More, Lord Chancellor, was one, assisted by the two Chief Justices. Lord Herbert says, "A copy of them was then sent down to the Lower House, for their perusal and approbation.—But amongst the Commons, the Cardinal's cause was so well defended by his Secretary Cromwell, then a Member, that he absolutely cleared his Master from any charge of Treason, and he was fully acquitted thereof."

17. In 1536, on the 24th and 25th days of the Parliament which met in the 28th year of Henry VIII. the Lord Chancellor Audley presented two Bills in the House of Lords, one for the Attainder of Thomas Fitzgarret and his five Uncles; the other for the Attainder of Thomas Lord Howard ‡.—Both Bills were read three times by

* This Act is not printed in the Statutes at Large, but is inserted in the Parliamentary Roll, in Vol. I. of the Lords Journal, p. cxxi.

† They are also printed in Coke's 4th Inst. p. 89.

‡ The crime alleged against this Nobleman, was, the having affianced or contracted to marry with the Lady Margaret Douglas, the King's Niece, without the King's consent.—He was for this attainted of High Treason, and a general law was made, (28th Henry VIII. Ch. 18.) which enacted, "That it shall be High Treason for any man to

"espouse, marry, or take to wife, any of the King's children, being lawfully born, or otherways commonly reputed for his children; or any of the King's sisters or aunts on the part of the father; or any of the lawful children of the King's brethren or sisters; or to contract matrimony with any of them, without the King's licence first had under the Great Seal; or to deflower any of them being unmarried."—This Act, with many others that had created new Treasons and Felonies, was repealed by the 1st Edward VI. Ch. 12.—and by the 1st Mary, Scff. 1. Ch. 1.

the Lords in the same day on which they were presented ; and returned from the Commons, the first, upon the next day to that in which they had received it ; and the latter, upon the very same day it came from the Lords, viz. on the last day of the Parliament, when the King came and gave the royal assent.

18. On Saturday the 10th of May, 1539, the Lord Cromwell, at this time the King's Vice-Gerent in spiritual matters, and Lord Privy Seal, presented a Bill of Attainder against the Marquis of Exeter *, and Edward Neville, and others, which was read twice upon that day †, and a third time on the Monday following. It was returned from the Commons on Friday the 16th, with a clause, including the names of other persons, which was agreed to by the Lords.—Lords Journals, Vol. I. p. 107, et. seq.

19. On the 10th of June, 1540, Thomas Cromwell, Earl of Essex, and Vice-Gerent ‡, was committed to the Tower by the Lords of the

* It should seem, from Lord Herbert's account of this transaction, that both the Marquis of Exeter and Sir Edward Neville, had been already tried, the first in December, 1538, by his Peers, the Lord Audley sitting as High Steward ; and the other, by a Jury ; and that they had both been found guilty and executed : and he adds, " The particular offences yet " of these great persons, are not so fully " made known to me that I can say much." —Life of Henry VIII. in Kennet, Vol. II. p. 216.

† After the second reading, the Bill was not referred to a Committee, but ordered to be ingrossed—" Traditur Clerico Parlamento-ram, in pergamenam redigenda."

‡ It appears from the Lords Journal of the Parliaments 1539, and 1540, That whilst Cromwell held this office of Vice-Gerent in matters spiritual, he had precedence of the

Archbishop of Canterbury. By the Statute 31st Henry VIII. ch. 10, intituled, " For " placing of the Lords," it is enacted, " That " the Lord Cromwell, having the office of " Vice-Gerent, and all other persons, which " hereafter shall have the said office, shall sit " and be placed on the same form that the " Archbishop of Canterbury sitteth on, and " above the same Archbishop and his successors : and shall have voice to assent or dissent, " as other the Lords of Parliament." This office was created by Henry the VIIIth, after he was acknowledged " Supreme Head of the " Church of England," by an Act of Parliament passed in 1534, and was granted to Lord Cromwell, " for the good exercise of the said " most royal dignity and office."—I do not know, that this office of Vice-Gerent was ever held by any other person : the power exercised by him was, by the 1st of Elizabeth, Ch. 1. seci,

the Council, for High Treason; and on the 17th of June a Bill of Attainder was brought in against him, which was read a second and third time on the 19th *, and passed the Lords “Ne-
“ mine

sect. 18, transferred to Commissioners, whom the Queen, by that statute, was authorized to appoint; and who formed that High Commission Court with Ecclesiastical Jurisdiction, against which such complaints were made in the reign of Charles the 1st; and which was therefore finally abolished by the Statute 16th Charles I. Ch. 11, by which it was also enacted, “That no new Court shall hereafter be erected with the like power, jurisdiction, or authority.” Notwithstanding this clause, James the 1st, in the year 1686, by the advice of Jefferies, erected a similar Court, “without” (as Burnet says) “calling it the High Commission, but pretending that it was only a standing Court of Delegates. They had full power to proceed in a summary and arbitrary way in all Ecclesiastical matters, without limitation to any rule of law in their proceedings.”

History of his Own Times.

Vol. 1. p. 675.

In the 4th volume of the State Trials, p. 243. to 278, there are several proceedings held before this Court on complaint, (1.) against Compton, Bishop of London, for not suspending Dr. Sharp; (2.) against the University of Cambridge, for not admitting Alban Francis to a degree; and (3.) against Magdalen College, in Oxford, for not electing Anthony Farmer president. A copy of the King's Ecclesiastical Commission is inserted at the commencement of these proceedings, p. 243.—By the Bill of Rights, 1st William and Mary, sess. 2. ch. 2, it is declared, “That this Commission for erecting the late Court of Commissioners for Ecclesiastical causes, and all other Commissions and Courts of the like nature, are illegal and pernicious.”—See in the 8th volume, State Trials, Appendix, p. 557, the opinion of all the Judges,

and of the Attorney and Solicitor General, in the year 1711, “How far the Convocation are, by law, authorized to proceed in examining, censuring, and condemning such tenets, as are declared to be heresy, by the laws of the realm.”

* Sir Edward Coke, in the 4th part of his Institutes, Ch. 1. p. 37, speaking of this Act, says, “And albeit I find an Attainder by Parliament of a subject for High Treason, being committed to the Tower, and forthcoming to be heard, and yet never called to answer in either House of Parliament; (although I question not the power of Parliament, for without question, the Attainder standeth of force in law) yet this I say of the manner of proceeding, *Auferat oblivio, si potest; si non, utcumque silentium tegat.* For the more high and absolute the jurisdiction of the Commons is, the more just and honourable it ought to be in the proceeding, and to give example of justice to inferior Courts. But it is demanded, since he was attainted by Parliament, what should be the reason, that our Historians do all agree in this, That he suffered death by a law, that he himself had made? For answer hercof, I had it of Sir Thomas Gawdie, Knight, a grave and reverend Judge of the King's Bench, who lived at that time, That King Henry VIII. commanded Cromwell to attend the Chief Justices, and to know, “Whether a man, that was forthcoming, might be attainted of High Treason by Parliament, and never called to his answer?” The Judges answered, “That it was a dangerous question; and that the High Court of Parliament ought to give examples to inferior courts for proceeding according to justice; and that no inferior Court could do the like; and they
“ thought

“ mine Discrepante *.”—Lords Journals.—See also the 29th of June, 1540.

20. On the 18th of January, 1546, a Bill for the Attainder of Thomas Duke of Norfolk, and Henry Earl of Surrey, was brought into the House of Lords and read 1°,—It passed the Lords on the 20th of January, and the Commons on the 24th †.

21. On

“ thought the High Court of Parliament
 “ *would* never do it.’ But, being by the express
 “ commandment of the King, and pressed by
 “ the said Earl Cromwell to give a direct
 “ answer, they said, “ That if he be attainted
 “ by Parliament, it could not come in ques-
 “ tion afterwards, whether he were called or
 “ not called to answer.” And (Sir Edward
 “ Coke goes on to say) albeit their opinion
 “ was according to law, yet might they have
 “ made a better answer; for, by the statutes
 “ of Magna Charta, Ch. 29—the 5th Edward
 “ III. Ch. 9.—and 28 Edward III. Ch. 5.
 “ —“ no man ought to be condemned with-
 “ out answer,” which they might have
 “ certified.—But, *facta tenent multa, quæ fieri*
 “ *prohibentur*; the Act of Attainder, being
 “ passed by Parliament, did bind, as they re-
 “ solved. The party, against whom this was
 “ intended, was never called in question; but
 “ the first man after the said resolution, that
 “ was so attainted, and never called to answer,
 “ was the said Cromwell, Earl of Essex;
 “ whereupon that erroneous and vulgar opinion
 “ amongst our Historians grew, “ That he
 “ died by the same law which he himself had
 “ made.”—I wonder Sir Edward Coke, who
 loved quotations, did not add, what could in
 no instance be more properly applied, than in
 this of Cromwell—

Nec Lex est æquior ulla,

Quam necis artifices arte perire suâ.

—Hume gives the following character of Crom-
 well; “ He was a man of prudence, industry,

“ and ability; worthy of a better master and of
 “ a better fate.—Though raised to the summit
 “ of power from a very low origin, he betray-
 “ ed no insolence or contempt of his inferiors;
 “ and was careful to remember all the obliga-
 “ tions which, during his lower fortune, he had
 “ owed to any one. In the early part of his
 “ life he had served as a private centinel in
 “ the Italian wars.”—History of Henry VIII.
 Ch. 6. See also Burnet’s History of the Re-
 formation, Vol. I. p. 172.

* It appears from the list of Bills which re-
 ceived the royal assent on the 24th of July,
 1540, the last day of the Parliament, that
 several other Bills of Attainder passed in this
 Session: some for High Treason, one for
 Heresy, and one for Theft and Felony.—See
 in the Lords Journal a curious entry of the
 form of the King’s coming to the House of
 Lords, the manner of the Lords receiving him
 in their robes, and of the Speaker, with the
 Commons, coming to the bar; and the several
 speeches of the King, Chancellor, and Speaker,
 upon that occasion.

† It appears from an entry in the Lords
 Journal of the 27th of January, that the Lord
 Chancellor declared to both Houses, that the
 reason for expediting this Bill without delay,
 was, that the King wished to confer the offices,
 which the Duke held, upon some other person,
 who might execute the same at the approaching
 ceremony of the coronation of his son Edward
 Prince of Wales.—And that therefore a com-
 mission had passed for giving the royal assent

21. On the 25th of February, 1548, a Bill of Attainder against the Lord Seymour of Sudely, Admiral of England, was brought into the House of Lords, and agreed to on the 27th, *communi omnium procerum assensu*, and was sent back from the Commons on the 5th of March *.

22. On the 12th of April, 1552, the Lords make amendments to a Bill, which had come from the Commons, for settling the lands of the late Duke of Somerset, by annexing to it a clause, confirming the attainder of the said Duke and the others therein mentioned †.

23. On the 6th of November, 1555, a Bill is brought into the House of Commons for taking away the benefit of Clergy from one Bennet Smythe, for the murder of Rufford.—This Bill passed both Houses, and received the royal assent on the 9th of December following.

24. On the 28th of April, 1571, a Bill was brought from the Lords, for the confirmation of the Attainder of the late Earls of Northumberland and Westmoreland, and others, which passed the

to this Bill.—This was on Thursday, and the King died early on Friday morning.—This Act of Attainder was afterwards reversed in the 1st year of Queen Mary.—See the History of the Reversal in the 2d Vol. of this Work, p. 319.

* It is but too true, (as stated in the Parliamentary History, Vol. III. p. 238) that it appears by the Lords Journals, that the Protector, Duke of Somerset, brother to the Admiral, was present in the House upon the several days when the Bill was read.—Afterwards, on the 2d of March, when a message was sent to the Commons by the Master of the Rolls, and others, to acquaint them with the nature of the evidence upon which the Lords had passed the Bill, the Lords desire the “Lord Protector” to receive such answer as the Commons shall

send back to their message, and to report it to them at their next sitting.—The warrant, for the Lord Admiral’s execution, was also signed by his brother, the Lord Protector; as appears from a copy of it, inserted in the collection of Records to the 2d Vol. of Burnet’s History of the Reformation, p. 164, No 32.—The proceedings in Parliament upon this Bill are published in the State Trials, Vol. VII. p. 1.

† It does not clearly appear, from the Journal of either House, whether the Commons agreed to this amendment.—See what is said upon this subject in the Parliamentary History, Vol. III. p. 262.—“That the Commons would not agree to this clause, though they passed the Bill of Repeal.”

House of Commons on the 15th of May, with several amendments and savings*.

25. In March, 1586-7, a Bill passed for confirming the Attainder of Thomas late Lord Paget, and others. Having been concerned in the conspiracy, on account of Mary Queen of Scots, they had been already tried and executed; but by this Act all their goods and possessions were confiscated. — *Parliamentary History*, Vol. IV. p. 308.

OBSERVATIONS

On BILLS OF ATTAINDER.

We learn from these instances, as was observed before, how frequently this measure, of proceeding by Bill of Attainder, was adopted during the reigns of the Tudors, particularly by Henry VII. instead of the ancient, and, where justice can be obtained by a regular trial in a court of criminal jurisdiction, the more eligible proceeding by indictment or impeachment.

The Acts, during this period, appear principally to have had for their object, persons concerned in raising traitorous and tumultuous insurrections; and became, during the civil wars between the Houses of York and Lancaster, alternately the engine of the prevailing party,

* It appears from the Journal, that on the second reading of the Bill, on the 5th of May, Sir Henry Percy, one of the persons included

in the Bill, was present, and was heard by his Counsel, Mr. Fettyplace.

to wreak their vengeance against such of their enemies, as had taken part with their competitors for the Crown.

The cases of Empson and Dudley, and of Cromwell Earl of Essex, are instances, in which the parties accused would have been the proper objects of Parliamentary impeachment, for High Crimes and Misdemeanors, in their conduct as Ministers, or Officers employed by the Crown: but the impatient and overbearing spirit of the Sovereign, and that arbitrary power, which Henry VIII. from a variety of concurring circumstances, was enabled to exercise against every part of the Constitution, rendered the summary proceeding by Bill of Attainder the more proper for his purposes.

Blackstone, in treating of the subject of Parliamentary proceedings, says*, “As for Acts of Parliament to attain persons of Treason or Felony, or to inflict pains or penalties beyond or contrary to the common law, to serve a special purpose, I speak not of them, being to all intents and purposes new laws made *pro ré nata*, and by no means an execution of such as are already in being.—Whereas an impeachment before the Lords, by the Commons of Great Britain in Parliament, is a prosecution of the already known and established law, and has been frequently put in practice; being a presentment, to the most high and superior court of criminal jurisdiction, by the most solemn grand inquest of the whole kingdom.”—If, by this mode of expression, that learned Judge could be understood to insinuate an opinion, that this proceeding by Bill is in no case expedient or proper; or, that it would be more beneficial, that the highest and most daring criminals against the State should escape with impunity, on account of a defect of evidence, or the want of some particular form which would be necessary for their conviction in a court of law, rather than that their crimes should be brought to the consideration of Parliament;

* Blackstone's Commentaries, Book iv. Ch. 19. p. 236.

and that there they should be amenable to justice, “ though by a law made pro ré natâ, or (to use the more invidious expression) to “ serve a special purpose;” if this was his meaning, it appears to establish a doctrine, from which, if strictly adhered to, the public might receive much detriment. Although it is true, that this measure of passing Bills of Attainder, or Bills of Pains and Penalties, has been used as an engine of power; and, in the reign of bad princes, has been frequently abused to the oppression of innocence, it is not therefore just to conclude, that no instances can occur, in which it ought to be put in practice.—Cases have arisen (and in a period since the true principles of liberty have been perfectly understood and carried into effect) and may again arise, where the public safety, which is the first object of all government, has called for this extraordinary interference; and, in such instances, where can the exercise of an extraordinary power be vested with more security, than in the three branches of the legislature? It should, however, always be remembered, that this deviation from the more ordinary forms of proceeding by indictment or impeachment, ought never to be adopted, but in cases of absolute necessity; and in those instances only, where, from the magnitude of the crime, or the imminent danger to the state, it would be a greater public mischief to suffer the offence to pass unpunished, than even to over-step the common boundaries of law; and, for the sake of substantial justice and the security of posterity, by an exemplary though extraordinary proceeding, to mark with infamy and disgrace, perhaps to punish with death, even the highest and most powerful offenders*.

* Sir John Hawles, who was Solicitor General during great part of the reign of King William, whilst Lord Somers was Chancellor, says, in his remarks on the trial of Fitzharris, ‘ In all times the Parliament have practised “ (and it is necessarily incident to all supreme “ powers, in all governments) to enact or “ declare extravagant crimes to be greater,

“ than by the established law they are declared to be. And it is no injustice for the “ supreme power to punish a fact, in a higher “ manner than by law established, if the fact “ in its nature is a crime, and the circumstances make it much more heinous than “ ordinarily such crimes are.”

State Trials, Vol. IV. p. 172.

IV. *Bills of Pains and Penalties.*

1. **I**N the Parliament which met on the 15th of July, 1321, an Act was passed, which, after reciting several crimes committed by Hugh le Despencer the father, and Hugh le Despencer the son, awards, " That the father and son shall be both disinherited " for ever, as disinheritors to the Crown, and enemies to the King " and his people; and shall be banished the kingdom of England, " never to return again, unless it be by the assent of the King, and " by assent of the Prelates, Earls, and Barons in Parliament duly " summoned *."

2. There is a very uncommon proceeding recorded in the Parliamentary Roll, Vol. II. p. 297, N° 20, which, though it does not properly come under this title, or indeed that of any other regular Parliamentary proceeding, ought not to be passed over.—On the 21st of May, 1368, the 42d year of Edward III. the King, Prelates, Lords, and Commons, being in the White Chamber (after the business was over of reading the Petitions and Answers, with the Aid granted by the Commons and the King's thanks,) there staid and

* This Act, which is printed at length in the Appendix to the Statutes at Large, Vol. IX. p. 16, and is translated in Vol. I. of the Parliamentary History, p. 1605, begins, " The " Prelates, Earls, Barons, and other Peers " and Commons of the Realm, do shew " against Sir Hugh le Despencer, &c." and, after stating the several articles of accusation, concludes, " Which wickednesses " being notorious and true, as it is found " by the examination of the Earls, Barons, " and other Peers of the Land, Therefore " We, the Peers of the Land, Earls, and Barons, in presence of our Lord the King, do

" award, &c. &c."—The next year, 1322, another Act was passed, revoking this their sentence of banishment, for various reasons; one of which was, " That the said award was " made without calling them to answer, and " without the assent of the Prelates, who are " Peers of the Realm in Parliament, and " against the Great Charter of the Franchises " in England, which says, *No freeman shall be " banished, or otherwise destroyed, but by the " lawful judgement of his Peers, or the law of " the land.*"—Parliamentary History, Vol. I. p. 173.

dined with the King—all the Lords, and many of the Commons ;—and after dinner, returning into the White Chamber, Sir John Lee was brought before them, and accused of divers misdemeanors* ; of imprisoning William Latimer ; and, as Steward of the King's Household, for attacking divers persons, and making them answer to him, out of Council.—On which articles Sir John Lee, not being able sufficiently to excuse himself by law, was committed to the Tower of London until he should pay a fine, according to the King's pleasure.—And then the Prelates, Dukes, Earls, Barons, and Commons, departed.

3. In the 7th year of Henry VII. 1492, John Hayes, having received a letter from a person in Normandy, who had been a rebel and traitor, touching some attempt to be made against the King ; and Hayes having burnt the letter, and concealed the contents of it, and having suffered the messenger who brought it to go away, and having confessed and acknowledged the said charge ; an Act is passed, That the said John Hayes, being convicted of misprision by him committed against the King, of and for his unlawful demeaning and concealment in the premises, do forfeit all his goods, and be committed to prison till he hath made fine and ransom for the same.—Rot. Parl. Vol. VI. p. 454.

4. In January, 1549, a Bill is passed for disinheriting for his life, William West, for having attempted to poison the Lord Lawarr †.

5. On

* This accusation arose partly out of a petition presented in Parliament from William Latimer, which is entered on the Roll, N^o 21 ; but there were several other articles of charge, which, by order of the Lords, were urged against him, by Sir Robert de Thorpe, Chief Justice of the Common Pleas—See what is said before, on this case, in the Note, p. 62.

† It should seem, as if two Bills had been depending for this purpose at the same time,

one beginning in the Commons, and the other in the Lords ; but, from the very short and inaccurate entries in the Journals of that period, the proceeding upon them is not easily ascertained. It appears, that upon the 23d of January, 1549, William West, a prisoner in the Tower, is brought to the House of Commons, and clearly denies the fact ; but confessed his hand to be at the confession, which, he said, he did for fear.—Several witnesses were then brought

5. On the 9th of November, 1555, a Bill is read 1^o in the House of Lords, for the debarring of Ann Calthorpe, the late divorced wife of the Earl of Suffex, from her jointure, or dower, in case she shall not repair into the Realm, within a time limited, and make her purgation * before the Bishop of her diocese.—It did not pass this Session, being rejected by the Commons; but a Bill to the same effect was sent from the Commons to the House of Lords, on the 19th of February, 1556, was agreed to on the 21st of February, and received the Royal Assent on the 7th of March.

6. On the 20th of April, 1571, a Bill against Fugitives is brought into the House of Commons, and passed both Houses † in the course of the Session.—The object of this Bill was to recall several persons that had fled beyond sea, who had been concerned in the late Rebellion, or had withdrawn themselves on account of religion.—They were to return within a limited time, under the penalty of forfeiting the profits of their lands during their life, and also all their goods and chattels ‡.

brought in and examined, and on the 25th of January, the Bill was there read 3^o and passed by the Commons. On the 1st of February this Bill received the Royal Assent.

* It is said in the Parliamentary History, Vol. III. p. 349, that this lady had left her husband, and lived in France in open adultery, and had several children by others.

† From the entries in the Journal of the House of Commons of the proceedings on this Bill, upon the 20th, 24th, and 28th of April, and the 1st of May, it appears that there was

much doubt entertained of its expediency, as it was never read without many and long arguments.

‡ See Statutes at Large, 13th Eliz. ch. 3. and the Parliamentary History, Vol. IV. p. 100.—The abstract, as printed in the Statutes at Large, says, "If any born within this realm, or made free denizen, hath departed or shall depart the realm, without the Queen's license under the Great or Privy Seal, and shall not return within six months after notice by proclamation, he shall forfeit, &c. &c."

OBSERVATIONS

On BILLS OF PAINS AND PENALTIES.

Where the courts of criminal judicature are equal to the trial of any offence, and can, by the subsisting laws, inflict a punishment adequate to the crime, the same Observations are applicable to Bills of Pains and Penalties, as to Bills of Attainder, viz. That recourse should never be had to extraordinary modes of proceeding.—But if the crime is of a nature and magnitude deserving a punishment, in the particular case, far beyond what has by the law been deemed sufficient in similar but less atrocious misdemeanors;—or if the rules of admitting evidence, or other forms, to which the Judges in a court of law are bound to adhere, would preclude the execution of justice upon offenders, whose imprisonment or banishment from the country were become a necessary sacrifice to the order and well-being of the public at large;—it has been held *, even in the best times of this government, that such circumstances would reasonably justify a departure from the common forms of proceeding, and would entitle the Legislature itself to take cognizance of the case; and, by a Bill of Pains and Penalties, to avenge the mischief offered to the State; thereby to hold out an example which might prevent similar offences in future.

* See the Acts 10 and 11 William III. ch. 13.—1 Queen Anne, stat. 1. ch. 29.—1 Geo. I. ch. 7.—for continuing the imprisonment, during the pleasure of the Crown, of several persons, for a conspiracy to assassinate King William.—The several proceed-

ings against these persons are inserted in the 3d chapter of this Volume (under title, "*Bills of Pains and Penalties*," N^o 10 and 11.)—See also in the same chapter, the cases of Plunkett and Kelly, and of Bishop Atterbury, in the year 1723.

I M P E A C H M E N T.

CHAPTER THE SECOND;

From the Accession of James I. to the Revolution,

- I. *What are sufficient Grounds of Accusation.*
 - II. *Proceedings previous to carrying up the Charge.*
 - III. *Form of delivering the Charge.*
 - IV. *Proceedings in either House between delivering the Charge and the Trial.*
 - V. *Proceedings on the Trial.*
 - VI. *Commons demand Judgment.*
 - VII. *Bills of Attainder.*
 - VIII. *Bills of Pains and Penalties.*
-

THE commencement of the Proceedings, upon the several cases of Impeachment, which occur during this period, from the accession of James I. to the Revolution, being classed partly under the first title, "What are sufficient Grounds of Accusation," and partly under the next head, "Proceedings in the House of Commons previous to carrying up the Charge," it has been thought proper, for the conveniency of those who may wish to consult this Work, to prefix a table of the names of the persons against whom these proceedings were directed, with a reference to the pages in this Volume, where the Cases are to be found:—

1. Sir Giles Mompeyson, 1620—for having procured illegal Patents, &c. p. 99. and 120.
2. Lord Chancellor Bacon, 1620—for Corruption in his Office, p. 100.
3. Sir John Bennet, 1621—for Corruption as a Master in Chancery, p. 120.
4. Sir Lionel Cranfield, Earl of Middlesex, Lord Treasurer, 1624—for taking Bribes, p. 121.
5. Bishop of Norwich, 1624—for Extortion and Malversation in his Diocese, p. 121.
6. Duke of Buckingham, 1626—for a variety of Offences in his Administration, p. 103. and 123.
7. Montague, 1626—for publishing Books, contrary to the thirty-nine Articles, and tending to Sedition, p. 122.
8. Earl of Bristol, 1626—King's Charge against him, for behaviour, whilst Ambassador in Spain, p. 100.
9. Mainwaring, 1628—for Matter contained in Sermons, p. 124.
10. Mr. Mohun, 1628—for Misconduct as Deputy Warden of the Stannaries, p. 126.
11. Earl of Strafford, 1640—for Treason, and High Crimes and Misdemeanors, p. 127.
12. Judges, 1640—for their Conduct in the case of Ship-money, p. 127. and 132.
13. Archbishop Laud, 1640—for endeavouring to subvert the Laws of the Realm and of Religion, p. 128.
14. Bishop of Ely, Matthew Wren, 1640, p. 129.
15. The Lord Keeper Finch, 1640—for High Treason and other great Misdemeanors, p. 129. and 131.
16. Sir George Radcliffe, 1640—for High Treason, p. 130.
17. Dr. Cofins, 1640—p. 132.
18. Daniel Oneale, 1641—for High Treason, p. 104.
19. The Bishops, 1641—Makers of new Canons and Oath, p. 133.
20. Mr.

20. Mr. Jermyn, Piercy, and others, 1641—for High Treason, p. 134.
21. Accusation against the Lord Kimbolton, and five Members of the House of Commons, 1641, by the King's command—for High Treason, p. 104.
22. Drake, 1660—for writing a Book, intituled, "The Long Parliament revived," p. 135.
23. Lord Mordaunt, 1666—for dispossessing Mr. Tayleur of Apartments at Windsor, and imprisoning him, p. 110. and 136.
24. Earl of Clarendon, 1667—for High Crimes and Misdemeanors, p. 112. and 136.
25. Commissioner Pett, 1667—for Misdemeanors, as a Commissioner of the Navy, p. 112.
26. Lord Chief Justice Keeling, 1667—for illegal and arbitrary Proceedings as a Judge, p. 113.
27. Sir William Penn, 1668—for embezzling Prize Goods, p. 114.
28. Mr. Brunckard, 1668—for Misdemeanors in the Sea Engagement in 1665, p. 114.
29. Earl of Orrery, 1669—for High Treason and other High Misdemeanors, p. 138.
30. Earl of Arlington, 1673—for Treasonable and other Misdemeanors, p. 138.
31. Earl of Danby, 1675—for Misdemeanors in the Office of Lord High Treasurer, p. 140.
32. Lord Arundel, Lord Stafford, and the Popish Lords, 1678—for being concerned in the Popish Plot, p. 140.
33. Earl of Danby, 1678—upon his Letters to Mr. Montagu, Ambassador at Paris, p. 115. and 142.
34. Richard Thompson, Clerk, 1680—for preaching Sedition, p. 118.
35. Edward Seymour, Esq. 1680—for his Conduct as Treasurer of the Navy, p. 143.

36. Lord Chief Justice North, 1680—for advising the Proclamation against tumultuous Petitions, p. 115.
37. Lord Chief Justice Scroggs, Mr. Justice Jones, and Mr. Baron Weston, 1680—for High Treason and other High Crimes and Misdemeanors, p. 116. and 144.
38. Earl of Tyrone, 1680—for High Treason, p. 118.
39. Edward Fitzharris, 1681—for High Treason, p. 119.

I. *What are sufficient Grounds of Accusation.*

I. SEVERAL matters of accusation having been alleged and proved, at the Committee of Grievances, against Sir Giles Mompeffon, for having procured illegal patents, &c *. and these being reported to the House, there is much debate, on the 27th of February, 1620, in what manner he ought to be proceeded against criminally, and how punished.—A Committee is appointed to search Precedents, and to report what is fit to be done.—On the 28th of February, Sir E. Coke reports the Precedents; and the House resolve, “That, for the punishment of Sir Giles Mompeffon, the House should go to the Lords†.” But in order that

* In the course of this proceeding, several matters came out against Sir Francis Michell, which see on 5th and 10th March, 1620. On the 4th of May, 1621, the Lords send word, They are ready to give judgment against Sir Francis Michell; and they desire the Speaker and the House will presently come up and demand judgment.

† In the 1st Vol. of Parliamentary Proceedings, in 1620-1, p. 109, it is expressed thus, “The opinion of the Committee is, That we must join with the Lords for the punishing of Sir Giles Mompeffon, it being no offence against our particular House, or any Member of it, but a general grievance.”—In an instance that occurred very soon after this, the House, departing from this mode of proceeding, found themselves under great difficulties. For, on the 1st of May, 1621, the Commons having passed a very severe judgment against one Floyd, for speaking disrespectfully of the King and Queen of Bohemia, the King sent a message to them, on the 2d of May, expressing

doubts of the authority of the Commons to exercise jurisdiction in this case, and to sentence one, “who was no Member, nor offender against the House, or any Member of it.”—The King at the same time transmitted a record of the 1st Henry IV. as a Precedent against their having any such jurisdiction.—See the Debate upon this message in the Parliamentary Proceedings, 1620-1, Vol. II. p. 5, particularly the speeches of Mr. Noy and Sir Edward Coke. The record sent by the King, is in the Rot. Parl. Vol. III. p. 427, N° 79. “Les Communes monrèrent au Roi, q̄ come les juggementz du Parlement appartiegnent seulement au Roi & as Seigns, et nient as Communes, sinon en Cas q̄ s’il plest au Roi de sa grace especiale leur monrre les ditz juggementz, pur case de eux, q̄ nul Record soit fait en Parlement encontre les ditz Communes q̄ ils font ou ferront Parties as aucunes juggementz donez ou a doners en apres en Parlement.—A quoi leur feust responduz par l’Ercevesq̄ de Cantebirs, de

that he may be forthcoming, he is committed to the custody of the Serjeant at Arms*.

2. On the 15th and 17th of March, 1620, see the commencement of the Proceedings against the Lord Chancellor Bacon, which originated from a report from the Grand Committee of Courts of Justice †.

3. A very extraordinary proceeding took place in the House of Lords, upon a message from Charles the 1st, on the 21st of April, 1626 ‡, charging the Earl of Bristol with several offences committed whilst he was Ambassador in Spain;—and for scandalizing the Duke of Buckingham, and, by reflection, the King himself.—The Lords making some difficulty about committing the Earl of Bristol upon this charge; the Lord Keeper, on the first of May, delivered another message from the King, acquainting them, “That his Majesty had commanded the Attorney General to charge the Earl of Bristol before the Lords with High Treason, and with other offences and misdemeanors of a very high nature, and then

“Commandement du Roi, Coment mesmes
“les Communes font Petitioners & deman-
“dours, et q̄ le Roi et les Seign̄rs de tout
“temps ont eues, & averont de droit, les
“Juggementz en Parlement, en manere come
“mesmes les Communes ount montrez.—
“Sauve q̄ en Estatutes a faire, ou en Grantes
“et Subsidies, ou tiels Choses a faire, pour
“commune Profit du Roialme, le Roi voet
“avoir especialement leur advis & assent.”

* Having escaped out of the Serjeant's custody, and this being signified to the Lords at a Conference, the Lords issue orders to the Warden of the Cinque Ports, and all the great officers, to apprehend him.—And on the 3d of March, having by this flight acknowledged his guilt, he is expelled the House of Commons

† These proceedings, both in the House of

Commons and the House of Lords, are collected together, and published in the first volume of the State Trials. Lord Bacon, whilst the proceeding was depending before the Lords, wrote a letter of submission; in which he expressed himself, as follows, “I do
“ingenuously confess and acknowledge, that,
“having understood the particulars of the
“charge, not formally from the House, but
“enough to inform my conscience and memory, I find matter sufficient and full, both to move me to desert the defence, and to move your Lordships to condemn and censure me.”—State Trials, Vol. 1. p. 360.

‡ Though this case does not properly come within this Title, there arise in it so many curious questions relating to the Jurisdiction of the Lords, the admission of evidence, &c. &c. that I have taken the liberty to insert it here.

“ to

* to proceed in a legal course against him according to justice,
 “and the usual proceedings of Parliament*”—The Lords, upon
 a motion

* King Charles the First took a violent and most indecent part against the Earl of Bristol, throughout the whole of these proceedings.—On the 21st of April, 1626, he sends a message to the Lords, signifying his Royal pleasure, That the Earl of Bristol should be sent for as a delinquent, to answer to the House for the offences which his Majesty will cause to be charged against him.—The Lords hesitating about the manner of complying with the King's request, after consideration in the Committee of Privileges, order the Earl to be brought before them by the Gentleman Usher.—On the 29th of April, the Committee of Privileges report several instances of Lords accused, who were not committed to ward till after judgment.—On the 6th of May, after the articles charged upon Lord Bristol by the Attorney General had been read, he desires to know, of Mr. Attorney, his relator, that he might understand who is his accuser:—to which, the Attorney answers, “That the King himself, out of his own mouth, had given him directions for his relation against the Earl, and had corrected many things which were added.”—The Lords then order a copy of the King's charge to be given to Lord Bristol, and that he should have Counsel to plead his cause.—On the 8th of May, the King sends a message by the Lord Keeper, “That his Majesty, understanding that the not using Counsel for a defendant, in cases of treason and felony, is an ancient and fundamental law of the kingdom, therefore desires, that, so far as he has committed this cause to the honour and justice of the Lords, they would proceed with all caution, that the ancient and fundamental law may receive no prejudice or blemish.”—The Earl of Bristol then presented a petition to the Lords, stating, “That whereas it appears by the title of the charge exhibited against him, that he is to answer before his Majesty and the Peers, and *that hereby his Majesty is his Judge.*—And by Mr. Attorney's confession, this charge is by his Majesty's relation, and *so his Majesty is his accuser.*—And that several parts of the charge are grounded only upon private Conferences with his Majesty—*so that his Majesty by his testimony becomes a witness.*—And in case he the said Earl should be convicted, *his confiscation cometh to the Crown.*—He submits to the Lords, upon all these considerations, of what consequence such a precedent will be.”

On the 9th of May, the Lords propose to the Judges two questions, (1.) Whether in Treason or Felony the King's testimony can be admitted or not? (2.) Whether words spoken to the Prince, who is afterwards King, makes any alteration in the case? On the 13th of May, the Judges being called upon to deliver their opinions, the Lord Chief Justice acquaints the Lords, That they had received his Majesty's pleasure by the Attorney General, that, for certain reasons which were expressed by the Attorney, the Judges should forbear giving any answer to the questions put to them.

On the 15th of May, the Lords return an answer to the King's message of the 8th, about disallowing Counsel to the Earl of Bristol, “That they conceive their order upon this occasion did not prejudice any fundamental law of the Realm.”—And, “that in the 21st year of Jac. I. a general order was made (which see hereafter, in this Volume,) touching allowing Counsel to delinquents questioned in Parliament; at voting which, his Majesty, being then Prince, was present;—which order extends further than this order about the Earl of Bristol.”—The King replies, on the 17th, “That, having advised
 “ of

a motion made, "That the said Earl might be committed, and indicted presently," directed the Judges to withdraw, to consult Precedents, and to consider of the forms of proceedings in other courts in matters of this nature:—who, being returned, "desired to be excused to deliver any opinion of the Precedents of Parliamentary Proceedings, for that of them the Lords only are the Judges."—They state, however, what the manner of the proceeding is in the Courts below; and they report a second way of proceeding against parties accused of Treason, viz. by Bill of Attainder in Parliament, which is to pass both Houses.—But how the proceedings in this case ought to be, they leave to their Lordships determination.—The House not being satisfied herewith, touching the commitment of a Peer of the Realm upon a bare accusation, remand the Earl of Bristol to the house of the Gentleman Usher.—On the 2d of May, a motion is made, That the Earl of Bristol might be indicted, according to the Statute 35th of Henry VIII. for offences committed beyond the seas, and, that being certified into the House of Lords, then to proceed against him by trial of his Peers.—But this not being approved of, the Committee of Pri-

"of the message which your Lordships sent yesterday, and having taken into consideration, that himself hath commended this cause to your honour and justice; although his Majesty knows that, by the fundamental laws of the Realm, or custom and use of Parliament, Counsel is not to be allowed to a person accused of High Treason; yet, since his Majesty may, at his own pleasure, descend between his own right and prerogative; and that it may appear to all the world, that his Majesty, in his gracious goodness, is pleased to afford the Earl of Bristol all ways of defence, in a more ample manner than is due to him by law, he is content, and doth hereby give full licence, that in this particular case, the Earl of Bristol may have Counsel both to advise him, and to speak and plead for him."

Whoever will compare this abstract of these Proceedings, with the conduct of the same Monarch, in the case of the Earl of Arundel, (which occurred about the same time, and which is to be found in the 1st Vol. of this Work, p. 141.) will find marks of the same disposition, arbitrary in principle, high and imperious in language, yet in the end unpersevering and submissive.—An unfortunate disposition! which, in the Parliament that met in November, 1640, very justly provoked an opposition to the illegal measures of the King's government; but which afterwards, in the course of that Parliament, too fatally encouraged and promoted the designs of those independents, whose object had been from the beginning to destroy the Monarchy, and to overturn the established forms of the constitution both in Church and State.

vileges are ordered to search Precedents: and on the 4th of May, the Earl of Devonshire reports, that they had found one, which gave them full satisfaction, touching the trial of a Peer in Parliament; viz. the trial of the Earl of Northumberland, the 5th of Henry IV *.—The House being satisfied with this Precedent, order the Attorney General to prepare the heads of the charge against the Earl of Bristol.—That the Earl shall receive the charge at the Bar, and the cause to be retained wholly in the House of Lords.

4. On the 21st of April, 1626, Mr. Glanville, from the Select Committee appointed to consider of the charges against the Duke of Buckingham, reports, That they desire the House will resolve, "Whether common fame is a ground for this House to proceed upon †."—It is resolved to consider this the next day, and Precedents to be produced—After a long debate ‡, on the 22d of April,

* See this proceeding in the Rot. Parl. 5th Henry IV. N^o 11 and 12, Vol. III. p. 524—where it will appear, That the Earl of Northumberland appeared before the King, Lords, and Commons in Parliament.—That the Earl returned his thanks to the King, Lords, and Commons, for the share they took in the proceeding.—This case, therefore, though the judgment was only by the King and Lords, was no precedent to justify the mode of proceeding adopted by the King, against the Earl of Bristol.

† It should seem from what Bracton says, in the 3d Book, ch. 22. "De Corona," as if common fame, "si oriatur apud bonos et graves" were a ground for an indictment at the Common Law.

Bracton de Legibus, p. 143.

‡ See the heads of this debate in the Parliamentary History, Vol. VI. p. 435, and in the Journal of the 22d of April, particularly Mr. Selden's speech, in which he says, "These

"cases are to be ruled by the law of Parliament, and not either by the common or civil law."—Mr. Littleton says, "This is not a House for definitive judgment, but of information, denunciation, or presentment, for which common fame is sufficient."—Mr. Noy says, "There are two questions, 1. Whether a common fame? 2dly, Whether this fame be true?—We will not transmit without the first enquiry; but without the second, we may; for peradventure we cannot come by the witnesses; as if the witnesses be of the Lords House."—So, in the Report of a Free Conference, on the 27th of February, 1702, it is said, "There is this difference between a resolution of the Commons, and that of the Lords; The vote of the House of Commons is but in order to a prosecution; which they cannot vote, without declaring the crime; and they can never come to be judges of it.—The House of Commons is the grand inquest of the nation;

April, the House resolve, "That common fame is a good ground
" of proceeding of this House, either to enquire of here, or transmit
" the complaint, if the House find cause, to the King or Lords."

5. On the 17th of December, 1641, the House resolve, That they will proceed against Daniel Oneile by way of accusation and impeachment, for "High Treason." The accusation and impeachment are read, and re-committed to the same Committee, to prepare it, in such a way, as that all the evidence may be brought in.

6. The following case is, like the preceding one (N^o 3.) not an Impeachment by the Commons, but an accusation on the part of the King, by the Attorney General, before the Lords, of certain persons for High Treason and other high misdemeanors *. On the 3d of January, 1641, the Attorney General, Sir Edward Herbert, informs the Lords, That the King had commanded him to tell their Lordships, that divers great and treasonable designs and practices, against his Majesty and the State, had come to his Majesty's knowledge; for which the King had given him command, in his name, to accuse, and he accordingly did accuse six persons of High Treason and other high misdemeanors; and he delivered the articles in writing, which he had in his hand, and which he received from his Majesty, in which articles the persons names and the heads of the treasons were contained.—The articles are then read, purporting to be "Articles of High Treason and other high misdemeanors, against

* tion; and every Grand Jury, that finds
" *billa vera* on an indictment, does by that
" declare the man guilty: But the Lords
" have a judicial capacity; and their resolution,
" before an accusation brought, is pre-
" judging the cause, that may come regularly
" before them." See before, Vol. III. p. 476.

* The proceedings upon this case go into a period beyond the 4th of January, 1641, and therefore beyond that limit which is prescribed in this compilation; but, as they contain much curious history, tending to illustrate the character of Charles the First, they are here inserted.

“ the Lord Kimbolton *, Mr. Denzil Holles, Sir Arthur Haselrig, “ Mr. John Pym, Mr. John Hampden, and Mr. William Strode.” There were seven articles of charge.—Mr. Attorney then, from his Majesty, desired, 1. That a Select Committee of Lords might be appointed to take the examination of witnesses, and that this might be a Committee of Secrecy. 2. That he might be at liberty to add or alter, if he shall see cause, according to justice. 3. That their Lordships would take care for the securing of their persons, as in justice there should be cause.—The House refer all this matter to a Committee of the whole House, to consider, 1. Whether this accusation of Mr. Attorney General be a regular proceeding according to law. 2. Whether there were any such proceedings ever before, as in this case. 3. Whether an accusation of Treason may be brought into this House, by the King’s Attorney, against a Peer in

* This Lord Kimbolton was the eldest son of the Earl of Manchester, and had, some years before, been called up to the House of Lords, by Charles the First. He had, after this period, a considerable share in the conduct of affairs, as General of the Parliament forces, during the civil war. See Lord Clarendon’s character of him, *History of the Rebellion*, Vol. II. p. 160, and the charge made against him by Cromwell, in 1644, with his answer in vindication of his conduct.—Rushworth’s *Collections*, Vol. V. p. 732, 733. “ Having “ gone a certain length,” (Lord Clarendon observes) “ he was at last dismissed, and removed from any trust, for no other reason, “ but because he was not wicked enough.” Sir William Waller and the Earl of Essex both shared the same fate, and for the same cause.—See Sir William Waller’s *Apology*, published in 1793.—Hume, in his *History of Charles the First*, gives a very curious and entertaining account of the rise and character of the Independents; who, in the year 1644, began to separate themselves from the Presbyterian party, and to avow principles leading to a total abolition of the Monarchy and even of

the Aristocracy; and to project an entire equality of rank and order, in a Republic, quite free and independent. Principles, by no means agreeable to the then leaders in Government, to the Earls of Manchester, Essex, and Northumberland, to Sir William Waller, Mr. Holles, Whitelocke, Maynard, and Glynn. The leaders of these Independents were, Sir Harry Vane, Oliver Cromwell, Nathaniel Fiennes, and Oliver St. John, the Solicitor General. Mr. Hume says, “ That at this time, a considerable majority in the Parliament, and a “ much greater in the nation, were attached “ to the Presbyterian party; and that it was “ only by cunning and deceit at first, and afterwards by violence, that the Independents could entertain any hopes of success. “ Cromwell, notwithstanding his habits of profound hypocrisy, could not help betraying “ his favourite notions of equality, by saying, “ in a discourse with the Earl of Manchester, “ —My Lord, it never will be well with England, till you are Mr. Montagu, and there “ shall be never a Lord or Peer in the kingdom.”

Hume’s History of England,
Vol. V. ch. 8.

Parliament. 4. Whether any person ought to be committed to custody upon a general accusation from the King or the House of Commons, before it be reduced into particulars. And a Select Committee was appointed to peruse and consider of Precedents and Records concerning these particulars.—On the next day, the 4th of January (the fatal day, on which Charles I. went in person to the House of Commons*, to seize the five Members that he had the day before accused in the House of Lords) the Commons, in a Conference, complain to the Lords of a scandalous paper they had met with, containing articles of High Treason, &c. against the Lord Kimbolton, and five Members of the House of Commons; and they desire their Lordships would join with them, to find out the authors, and to bring them to condign punishment for so high a breach of

* The following very curious account of this transaction is transcribed from some minutes, taken at the time *in pencil*, by Sir Edmund Verney, Knight Marshal, who afterwards bore the King's standard at the battle of Edgehill, and was killed in that action. "On Tuesday, the 4th January, 1641, when the House met after their adjournment till one o'clock, 'twas moved (considering there was an intention to take the five Members by force) to avoid all tumult, "That they be commanded to absent themselves," but entered no orders for it, and then the five Gentlemen went out of the House; a little after the King came with all his guards and all his pensioners, and two or three hundred soldiers and gentlemen. He commanded all the soldiers to stay in the Hall, and sent us word, he was at the door. The Speaker was commanded to sit still, with the mace laying before him; then the King came to the door and took the Pallgrave in with him, and commanded all that came with him, upon their lives, not to come in; so the doors were kept open; and the Earl of Roxborough stood within the door, leaning upon it. Then the King came upwards

"towards the Chair with his hat off, and the Speaker slept out to meet him; when the King stepped up to his place, and stood upon the step, but sat not down in the Chair. Then he said, "He expected obedience to his message of yesterday, and not an answer." On the Speaker's saying, "That he had neither eyes or tongue, to see or say any thing but what the House commanded him," the King said, "He thought his own eyes as good as his, but that the birds were flown; but he expected, that the House would send them to him, for their treason was foul, and such a one as we should all thank him to discover," and so went out, putting off his hat, till he came to the door. Upon this the House resolved to adjourn immediately to to-morrow, at one o'clock, and consider what was to be done."

These minutes, taken at the time *in pencil*, were found amongst the papers of the late Earl Verney, written by his ancestor, Sir Edmund Verney; and, though at so distant a period, were plain enough to be legible.—Compare this with Rushworth's account of the same transaction, in the Appendix to the 1st Vol. of this work, No 4.

the privileges of Parliament.—On the 11th of January, the Attorney General being called upon by the Lords, at the desire of the Lord Kimbolton, to know when he would be ready to prosecute his accusation, declared, “ That what he had done, was by the express command of the King his Master, and not done by his advice; and that he had received no further directions.”—On the 12th of January, Mr. Attorney makes a further narrative of what he did the day he charged the six persons, and shewed that he did it merely by directions from the King; and desired time to prepare himself to shew, That what he did in charging them with High Treason was in a legal and warrantable proceeding, agreeable to the course of Parliaments, and fit for him to do as the King’s Attorney.—The Lords give him till the next day.—On that day, the 13th of January, the Lord Keeper delivers a message from the King, which his Majesty had commanded him to give to both Houses, “ That his Majesty taking notice, that some conceive it disputable whether this proceeding against the Lord Kimbolton, and the five Members of the House of Commons, be legal, and agreeable to the privileges of Parliament, and being very desirous to give satisfaction to all men, in all matters that may seem to have relation to privilege;—his Majesty is pleased to wave his former proceedings; and, all doubts by this means being settled, when the minds of men are composed, his Majesty will proceed thereupon in an unquestionable way; and assures his Parliament, that, upon all occasions*, he will be as careful of their privileges, as of his life and his crown.” This answer of the King’s is immediately communicated to the House of Commons: and then the Attorney General, having again endeavoured to exculpate himself, as having had

* The articles were, by his Majesty’s command, delivered in the House of Lords on the 3d of January. On the 4th of January, the King went in person into the House of Commons, for the purpose of seizing by force five of their Members. And on the 13th of January, he declares to both Houses, “ That, upon all occasions, he will be as careful of their privileges, as of his life and his crown.”

nothing to do, either with the matter of the charge, or the framing of the articles, and that he delivered them only in obedience to the King's command, insisted upon the legality of the proceedings, and grounded his justification on the proceedings of the King's Attorney in the Earl of Bristol's case *, 1st and 2d of Charles I. —The House of Commons demand a Conference with the Lords upon this subject, and that the Attorney General should be present, and be required to answer such questions as should be put to him †. —On the 14th of January, the King sends a further message upon this subject, in addition to what he had said before, "His Majesty, " being no less tender of the Privileges of Parliament, and thinking " himself no less concerned, that they be not broken, and that they " be asserted and vindicated, whensoever they are so, than the Par- " liament itself, hath thought fit to add to his last message this pro- " fession, That in all his proceedings against the Lord Kimbolton, " and the five Members, he had never the least intention of violat- " ing the least privilege of Parliament—and in case any doubt of " privileges remain, he will be willing to clear that, and assert those " by any reasonable way, that the Parliament shall advise him to."—He then hopes the Parliament will lay by their jealousies, and apply themselves to the public business.—Notwithstanding these repeated messages, the Lords, on the 15th of January, concur with the Commons in resolving, "That this impeachment, and the proceedings " thereupon, is a high breach of the privileges of Parliament," and they appoint a Committee to meet a Committee of the Commons, to

* See this case before in pages 100, 101, and 102.

† See the questions intended to be put, in the Commons Journal of the 13th of January; and the report of the Conference, with the Attorney's answers, on the 15th of January:—after which, the House of Commons resolve, to consider of some way for charging Mr. Attorney by this House as criminal, for exhibiting those articles in the Lords House against Members of this House, without any informa-

tion or proof, that appears; and that this House, and the Gentlemen charged by him, may have reparation from him, and that he may be put in security to stand the judgment of Parliament,—And the House then resolves, "That this act of Mr. Attorney's is illegal, " and a high crime."—These votes were ordered to be communicated to the Lords, and a Committee is appointed to prepare a charge against him.

consider in what manner this may be vindicated, and of a petition to his Majesty upon this subject.—This petition, which is in the Lords Journal of the 20th of January, desires, amongst other things, “ That his Majesty would, before Tuesday next, inform the two Houses of Parliament, what proof there is against the six Members, that accordingly there may be a legal and Parliamentary proceeding against them, and they receive, what in justice shall be their due, either for their acquittal or condemnation.” The King returns an answer on Monday the 24th of January, “ That he thinks it unusual and unfit to discover what proof there is against them ; and therefore holds it necessary, that it be resolved, Whether his Majesty be bound, in respect of privilege, to proceed against them by impeachment in Parliament ? or, Whether he be at liberty to prefer an indictment at the common law, in the usual way ; or have his choice of either ? Whereupon his Majesty will give such speedy direction for the prosecution, as shall shew his Majesty’s desire to satisfy both Houses, and to put a determination to this business.”—On the 1st of February, the two Houses renew their application to the King by petition, desiring, “ That the Parliament may be informed, before Friday next, the 4th of February, what proofs there are against the six Members, that accordingly they may be called to a legal trial ; it being the undoubted right and privilege of Parliament, that no Member of Parliament can be proceeded against without the consent of Parliament.”—On the 5th of February, Lord Newport informs the Lords, that the King will speedily return an answer to their petition.—Accordingly, on the 7th of February, the King writes a letter to the Lord Keeper, inclosing the following paper, with directions that it should be read in Parliament :—“ To the petition concerning the Members of either House, his Majesty returns this answer ;—That, as he once conceived that he had ground enough to accuse them, so now his Majesty finds as good cause, wholly to desert any further prosecution of them.”—On the 17th of February, both Houses join in a
further

further petition to the King, to know*, “Who the persons were
“that made the suggestions or informations to his Majesty against
“the said Members, that to the rights and privileges of Parliament
“may be vindicated.”—To which the King, on the 21st, desires
further time to consider of his answer †.

7. On the 18th of December, 1666, on a report upon a petition
of Mr. Tayleur, which had been referred to the Committee of
Grievances to be examined, stating, That Mr. Tayleur had, upon
an order from the King to Lord Mordaunt ‡ to clear the lodgings
belonging

* It appears from Lord Clarendon, that
this measure of the King's coming in person to
the House of Commons, to seize the five Mem-
bers, was advised by the Lord Digby, and that
no other person was consulted with, on this very
important step. History of the Rebellion, Vol. I.
p. 282, Book iv. See in the “Memoires pour
“servir a l' Histoire d' Anne d' Autriche,”
Vol. I. p. 265, a very curious account of this
transaction, which the Queen, Henrietta Maria,
makes to Madame de Motteville, the author of
that Work.—The Queen had communicated
the secret of the King's intentions to Lady Car-
lisle, who gave notice of it to the parties con-
cerned time enough for them to escape out of
the House of Commons.—“La Reine, qui,
“en cet endroit, avoit fait une faute notable,
“en me contant sa légèreté, se condamna
“ellemême; mais, ce qui est admirable,
“quoiqu'elle l'eût avouée au Roi, je n'ai
“point remarqué qu'il l'en eût moins bien
“traitée. Elle en a fait pénitence par son
“repentir, & point du tout par aucun re-
“proche que ce Prince lui en ait fait.”

† Thus ended this extraordinary transac-
tion, on the part of the King; but on the 12th
of February, the House of Commons find arti-
cles of impeachment against Sir Edward Her-
bert, Knight, for high crimes and misde-
meanors; which are carried up to the Lords

on the 14th.—The Attorney General is called
in to hear the charge, has time given him to
prepare his answer, and puts in security for
5000*l.* for his appearance.—On the 22d of
February, the Attorney puts in his answer at
the Lords, in the presence of a Committee of
the House of Commons; the substance of
which answer is, “That, in whatever he
“had done, he had acted by the King's
“express commands.”—On the same day a
Bill is ordered, upon a division of 65 to 48,
to be brought into the House of Commons
against him—which is read 1^o on the 24th of
February, and then dropped.—It is intitled,
“A Bill for the exemplary punishment of Sir
“Edward Herbert, Knight, his Majesty's At-
“torney General, for exhibiting false and
“scandalous articles of High Treason against
“the Lord Kimbolton, and five Members of
“this House, in the House of Peers.”

‡ This John Lord Mordaunt was a younger
son of an Earl of Peterborough, and had been
very active, as appears from Lord Clarendon's
account of him, in bringing about the restora-
tion; for which services he was created by
Charles the II. Viscount Avalon, Baron Mor-
daunt; but in all the proceedings against him,
and in the Lords Journal, whenever his name
is mentioned, it is by the title of Viscount
Mordaunt. (Avalon was an antient name for
Glastonbury.)

belonging to the Chancellor of the Garter, in Windfor Castle, been turned out, in March, 1660, by soldiers of that garrison; and had been twice imprisoned by the Lord Mordaunt—the House resolve that such dispoſſeſſion was illegal, and that the ſaid imprisonments were illegal and arbitrary—and that an impeachment be drawn up againſt the Lord Mordaunt, on thoſe votes.—A Committee is immediately appointed to draw up the impeachment*.

8. On the 25th of October, 1667, Mr. Tayleur, in a ſubſequent ſeſſion, exhibits another petition, with articles of impeachment annexed, againſt the Lord Viſcount Mordaunt†; which were read, and Mr. Tayleur was called in, and affirmed he was ready to make out the matter contained therein.—A Committee is appointed to conſider of this petition and articles, and to examine, “ what new matter is in them, not contained in the articles and “ petition formerly exhibited, and to ſtate what that new matter “ is‡, and the progreſs and proceedings in this buſineſs in the former “ ſeſſion.”—This Committee are ordered, on the 7th of December, to compare thoſe articles with the former; and on the 14th of December, they are directed to hear and examine witneſſes on behalf of

Glaſtonbury, ſo called from the quantity of *Avellana*, or Filbert-nuts, which grew in that diſtrict.) He was father to Charles Earl of Peterborough and Monmouth, who made ſo conſiderable a figure, both in civil and military affairs, in the reigns of King William and Queen Anne.

* See, under the ſubſequent heads, the further proceedings between the two Houſes, upon theſe articles.

† The proceedings upon the impeachment which aroſe out of Mr. Tayleur's complaint, in the preceding ſeſſion, were interrupted by a diſpute between the two Houſes reſpecting the manner in which Lord Mordaunt ſhould appear in the Houſe of Lords.

‡ The direction to the Committee to examine, what *new* matter is in this petition and articles, not contained in thoſe formerly exhibited, implies, that it could be only in this *new* matter, that the Houſe could be now intereſted.—every thing, which was alleged in the former petition and articles, remaining in the ſtate, in which it was interrupted by the prorogation; and, as far as that complaint extended, liable to be proceeded in whenever the Commons ſhould pleaſe, without any further enquiry or examination.—In the firſt Vol. of Grey's Debates, p. 3, it is expreſſly ſtated, That it is *only* the *new* matter of the petition and articles, which was referred to the Committee.

the Lord Mordaunt, and all others concerned, before they make their report*.

9. On the 26th of October, 1667, a Committee is appointed to look into ancient Precedents, of the method of the proceedings of this House, in cases of impeachments for capital offences.—On the 29th of October, Mr. Vaughan reports from this Committee†, and, after reading the report, a Committee is appointed to reduce into heads the accusation against the Earl of Clarendon.

10. On a report made from the Committee appointed to enquire into the miscarriages of the late war, some matter appearing on the 14th of November, 1667, against Commissioner Pett, it is referred to the same Committee, to draw up an impeachment against Commissioner Pett, upon the whole matter before them. The articles are reported on the 28th of November, and are agreed to on the 19th of December‡.—They are not ordered to be ingrossed till the 23d of April, 1668; and are again read, and sent to the Lords on the 4th of May§.

11. On

* Nothing further appears in the Journal relating to this matter; it should seem (from what Lord Danby says, in his speech in the Court of King's Bench on the 27th of May, 1682, which is reported in the State Trials, Vol. II. p. 744) that about this time, Lord Mordaunt was advised to take out a pardon from the King for these offences.

† This report is not entered in the Journal; but the substance of it, and the debate which it occasioned, are to be found in Grey's Debates, Vol. I. p. 6.—Mr. Vaughan, Sir Edward Seymour, Mr. Prynne, and Serjeant Maynard, take a great part in this debate.—See in the Journal of the 6th of November, the articles of charge against Lord Clarendon. The proceedings at large are collected and published in the State Trials, Vol. II. p. 550.

‡ See the articles in the Journal of the 19th of December, 1667.

§ It does not appear from the Lords Journal, that they were ever carried up to the Lords.—The Commons, by the usual protestation, save to themselves the liberty of exhibiting any other articles, and of replying; and they pray, that Peter Pett may be called to answer the said several crimes and misdemeanors.—“And that such further proceedings may be had and used against him, as is agreeable to law and justice.”—But they say nothing about his commitment.—It appears from the Commons Journal of the 19th of December, that he had been committed by the Privy Council; and that, he having petitioned the House of Commons, they had directed the Lieutenant of the Tower to ac-
quaint

11. On the 16th of October, 1667, the House being informed, " That there have been some innovations of late in trials of men for their lives and deaths ; and, in some particular cases, restraints have been put upon juries, in the inquiries "—this matter is referred to a Committee. On the 18th of November, this Committee are empowered to receive information against the Lord Chief Justice Keeling, for any other misdemeanors, besides those concerning juries. And on the 11th of December, 1667, the Committee report several resolutions against the Lord Chief Justice Keeling, of illegal and arbitrary proceedings in his office *.—The Chief Justice desiring

quaint the Privy Council, " That this House were content he should have his liberty, on good bail, if the Council think fit."

* These resolutions are:—(1.) " That the proceedings of the Lord Chief Justice, in the cases now reported, are innovations in the trial of men for their lives and liberties: and that he hath used an arbitrary and illegal power, which is of dangerous consequence to the lives and liberties of the people of England, and tends to the introducing of an arbitrary government."

(2.) " That, in the place of judicature, the Lord Chief Justice hath undervalued, vilified, and contemned *Magna Charta*, the great preserver of our lives, freedom, and property."

(3.) " That he be brought to trial, in order to condign punishment, in such manner as the House shall judge most fit and requisite."—The Report of the facts, on which these resolutions are grounded, is not entered in the Journals; but the cases complained of, in which innovations had been had of late, were probably those of Wagstaff, and Hood. Wagstaff's case in Trin. Term, 17 Charles II. is reported in Hardres's Rep. p. 409. "Wagstaff and others of a jury were fined an hundred marks apiece by Lord Chief Justice Keeling, because, though evidence was

given, that persons had assembled at Conventicles, and had Bibles with them, the jury would not find them guilty of keeping a Conventicle, upon the late Act of the 16th Charles II. And the jury were committed till they paid their fine; and on application to the Court of Exchequer, Lord Chief Baron Hale directed the fines to be estreated." The other case, was in the 18th of Charles II. Kelyng's Reports, p. 50. "Hood was indicted for the murder of Neven; and upon the evidence it appeared, that he killed him without provocation, and thereupon I directed the jury that it was murder: notwithstanding they would find it only manslaughter; whereupon I fined the jury five pounds apiece, and committed them to gaol till they found sureties to appear at the next assizes. I afterwards, on the petition of the jurors, took down their fines to forty shillings apiece, which they all paid." This conduct of Chief Justice Keeling was grounded on the authority of Wharton's case, Mich. Term, 44 Eliz. reported in Yelverton's Rep. p. 23. "Wharton and others were indicted of murder; on which indictment all the parties were found, Not Guilty; per q Popham, Gaudy, and Fenner, fuerunt valde irati, et tous les jurors comit et fine, et oblige a leur bon behaviour."—See the case of

Watts

ing to be heard, he is admitted on the 13th of December, and heard in his defence to the matters charged against him—and being withdrawn, the House resolve, “ That they will proceed no farther in “ the matter against him.”

12. On the 14th of April, 1668, Sir W. Penn’s name being mentioned in a report from the Commissioners for taking the public accounts, and he being charged with the embezzlement of prize goods—the House give two days to Sir W. Penn to make his answer to those charges, and direct the Commissioners of Accounts against that day to transmit to the House all such evidence, which they have on this subject relating to Sir W. Penn.—On the day appointed, the 16th of April, Sir W. Penn’s answer, and the evidence as far as it concerned him, being read; and Sir W. Penn having been heard in his place—it is resolved, That an impeachment be had against Sir W. Penn; and a Committee is appointed to prepare and draw up the impeachment*.

13. On the 21st of April, 1668, after much examination into the causes of the miscarriage in the naval engagement with the Dutch, in 1665, the House resolve, “ That Mr. Brunckard is “ guilty of bringing pretended orders from the Duke of York to “ Sir John Harman, commanding the lowering the sails in the June

† Watts v. Brains, in 1 Croke’s Rep. p. 778, and Mr. Emlyn’s notes to Hale’s Plac. Cor. 2d Vol. p. 158, 161. See also Grey’s Debates, Vol. I. p. 62, 67.—A Bill was immediately ordered in, but which did not pass the House of Commons, to declare “ the fining and imprisoning of jurors “ to be illegal.” How far the courts of law are empowered to fine or punish jurors, for giving, what appears to the Court to be an improper verdict, see Bushel’s case, as reported by Lord Chief Justice Vaughan, Reports, p. 135. See the trial of Penn and Mead,

out of which this case of Bushel arose; with the manner in which the Recorder imposed upon each jurymen a fine of forty marks, and imprisoned them till it was paid, “ for following their own judgments and opinions, rather than the good and wholesome advice “ given them by the Court.” State Trials, Vol. II. p. 606, 610.

* See the debate on the proceedings of these two days, in Grey’s Debates, Vol. I. p. 133. et subf.

“ engagement, 1665;” and also, “ That Mr. Brunckard be impeached for this misdemeanor.” A Committee is appointed to prepare and draw up the impeachment. These articles are reported on the 7th of May, and are agreed to on the 8th *.

14. On the 19th of December, 1678, upon reading two letters † from the Lord High Treasurer Danby to Mr. Montagu, Ambassador at Paris, the House immediately resolve, “ That there “ is sufficient matter of impeachment against the Lord Treasurer;” and they appoint a Committee to prepare and draw up the articles; and the Committee has power to send for persons, papers, and records, and to receive any further information or evidence ‡.

15. On the 24th of November, 1680 §, Mr. Attorney General was called in, and examined touching the manner of issuing forth the Proclamation, styled, “ A Proclamation against tumultuous Petitions;” and, upon his informing the House, That Sir Francis North, Chief Justice of the Common Pleas, was advising and assisting in the drawing and passing of the said Proclamation ||.—Resolved, nemine contradicente, “ That the evidence this day given to “ this House, against Sir Francis North, Chief Justice of the Court “ of Common Pleas, is a sufficient ground for this House to proceed “ upon an impeachment against him for high crimes and misde-

* These articles do not appear in the Journal.—See in Grey’s Debates, Vol. I. p. 139 and 143, what passed upon this occasion.

† See Bishop Burnet’s account of this transaction, in Vol. I. p. 439, et subf. and the debate in Grey’s Debates, Vol. VI. p. 337.

‡ The proceedings in Parliament upon this prosecution, are collected and published in the State Trials, Vol. II. p. 727.

§ This Attorney General was Sir Creswell Leving.—There was a debate as to the manner of receiving him; and it was ordered, “ That Mr. Attorney General do stand within

“ the Bar, the Mace standing by him within “ out the Bar.”—Grey’s Debates, Vol. VIII. p. 61.

|| See the substance of the Attorney General’s information, in Grey’s Debates, Vol. VIII. p. 61, and the debate which arose upon it.—It appears, that a doubt was raised, Whether Sir Francis North ought not to be sent for, to be heard, before any resolution is passed against him—which was over-ruled.—See particularly the speeches of Sir William Jones and Sir Francis Winnington upon this question, of the propriety of hearing him.

“meanors;” and a Committee is appointed to prepare the heads of an impeachment*.

16. On the 23d of December, 1680, Sir Richard Corbett reports from the Committee † appointed to examine the proceedings of the Judges in Westminster Hall, several resolutions :

(1.)

That the discharging the Grand Jury by the Court of King’s Bench, in Trinity Term last, before they had finished their presentments, was illegal, arbitrary, and an high misdemeanor.

(2.)

That a rule made by the Court of King’s Bench, against printing a certain book, was illegal and arbitrary.

(3.)

That the Court of King’s Bench, in the imposition of fines on offenders of late years, hath acted arbitrarily, illegally, and partially ;

* See in Roger North’s Examen, Part 3d, p. 541, his account of this matter, with a copy of the Proclamation complained of, and what passed at the Privy Council, in the King’s presence, between the Lord Chief Justice North and the Attorney General, as to which of them should draw the Proclamation. The object of this Proclamation was to suppress petitions to the King, that were preparing in several parts of the kingdom, desiring him to call a Parliament ; under pretence that these petitions “tended to promote discontents among the people, and to raise sedition and rebellion.” Counter addresses were set on foot by the Court party, expressing their abhorrence of these tumultuous proceedings ; from whence the nation came to be divided into *Petitioners* and *Abhorrrers*. Mr. Hume says, “These terms were soon forgot, and in their room were substituted the well-known epithets of *Whig* and *Tory*. The Court party reproached their antagonists

“with their affinity to the fanatical conventiclers in Scotland, who were known by the name of Whigs : The Counter Party found a resemblance between the Courtiers, and the Popish banditti in Ireland, to whom the appellation of Tory was affixed. And after this manner these foolish terms of reproach came into public and general use ; and even at present seem not nearer their end, than when they were first invented.”

History of Charles II. ch. 61b.

† This Committee had been appointed on the 23d of November, 1680, upon the examination of several persons at the Bar, who had served on the Grand Jury for Middlesex, which had been discharged by the Lord Chief Justice Scroggs ; and of several other persons who had been present when Mr. Baron Weston gave his charge at the Assizes for Surry.—See the debate upon these proceedings in Grey’s Debates, Vol. VIII. p. 53. et subseq. and in the 7th Vol. of the State Trials, p. 479.

favouring

favouring Papists, and persons Popishly affected, and excessively oppressing his Majesty's Protestant subjects.

(4.)

That the refusing sufficient bail in certain cases, wherein the persons committed were bailable by law, was illegal, and a high breach of the liberty of the subject.

(5.)

That certain expressions, in a charge given by Baron Weston, were a scandal to the Reformation, in derogation of the rights and privileges of Parliaments, and tending to raise discord between his Majesty and his subjects*.

(6.)

That certain Warrants issued by Chief Justice Scroggs, against printers and booksellers, are arbitrary and illegal.—The House agree to these Resolutions;—and immediately resolve, † That Sir W. Scroggs, Chief Justice of the King's Bench, Sir Thomas Jones, one of the Justices of the King's Bench, and Sir Richard Weston ‡, one of the Barons of the Court of Exchequer, be im-

* Amongst other matters in Baron Weston's charge, after abusing Luther, Calvin, and the other reformers, for having acted "against the minds of their Princes," he adds, "and now their disciples are restless, amusing us with fears, and nothing will serve them but a Parliament; for my part, I know no representative of the nation, but the King: all power centers in him."—See the proceedings of the House of Commons, on the 24th and 26th of November, 1795, touching a pamphlet which was declared by them to be a malicious, scandalous, and seditious libel, &c."

† The articles against Sir William Scroggs are reported on the 3d of January, and carried up to the Lords, on the 7th.—They impeach him, though a *Commoner*, of "High

"Treason" and other high crimes and misdemeanors.—The Chief Justice delivers in his answer to these articles, *in the subsequent Parliament*, but does not, as a *Commoner*, plead to the Lords jurisdiction.—See the proceedings against the other Judges, in the State Trials, Vol. III. p. 218.

‡ The Resolution reported from the Committee respecting Baron Weston's charge to the jury, was amended by the House as follows: "That the expressions in the charge given by the said Baron Weston were a scandal to the Reformation; and tending to raise discord between his Majesty and his subjects, and to the subversion of the ancient constitution of Parliaments, and of the government of the kingdom."

peached upon the said Report and Resolutions. And a Committee is appointed to prepare impeachments accordingly *.

17. On the 9th of November, 1680, Richard Thompson, Clerk, is sent for, in custody of the Serjeant, to answer at the Bar, for a high misdemeanor against the Privileges of the House †. On the 6th of December, he petitions; which Petition, on the 8th, is referred to a Committee to examine; and also the matter of the complaint for which he stands committed. On the 24th of December, the report from this Committee is taken into consideration; and the House resolve, “That Richard Thompson, Clerk, hath publicly defamed his sacred Majesty; preached sedition; vilified the Reformation; promoted Popery, by asserting Popish principles, decrying the Popish plot, and turning the same upon the Protestants; and endeavouring to subvert the liberty and property of the subject, and the Rights and Privileges of Parliament.—And that he is a scandal to his function.”—They then resolve, That he be impeached upon the said Report and Resolutions ‡; and a Committee is appointed to prepare the impeachment §.

18. On the 6th of January, 1680, upon reading a Report from a Committee appointed to receive informations relating to the Po-

* See the further proceedings against Sir W. Scroggs, under the following titles, and more at length in the State Trials, Vol. VII. p. 479, where it will be found, that, though several Members express their doubts how far the Commons ought to impeach, for High Treason, a person as guilty of crimes which are not declared to be such by the Statute of Treasons, the 25th Edward III. no person doubts, but that, if the crime charged does amount to High Treason, Sir W. Scroggs, a Commoner, is an object of impeachment, though for a capital offence.

† It appears from the Report, which is entered in the Journal of the 24th of December,

that the principal complaint against Thompson, was for a sermon that he had preached, on the 30th of January, 1679, against the Presbyterians, and in favour of Popery—and reflecting on the proceedings about the Popish Plot.

‡ On the 5th of January, Thompson petitions—and the Serjeant is impowered to receive sufficient security for his forthcoming to answer to the impeachment of this House against him.

§ This Committee have power to receive further information against the said Richard Thompson; and to send for persons, papers, and records.

pish Plot in Ireland—the House resolve, *nemine contradicente* *, That Richard Pore, Esquire, Earl of Tyrone in the kingdom of Ireland, be impeached of high treason. Lord Dursley is ordered to go up to the Bar of the House of Lords and impeach him; and to pray that he may be committed to safe custody †.

19. On the 25th of March, 1681, upon reading a report of several examinations, that had been taken, relating to the Popish Plot; the House resolve, “That Edward Fitz Harris be impeached of “high treason.” And Mr. Secretary Jenkins ‡ is ordered to go up, the next morning, and impeach him at the Bar of the Lords House.

* Here is another instance of an impeachment carried up against a Commoner for high treason.—Sir William Jones, in the debate, says, “There is no question, but a Peer of “Ireland is but a Commoner in England; “and no question but he may be proceeded “against by impeachment, as well as by common trial.—You cannot mistrust your Majesties, nor a common jury; but the accusation of Lord Tyrone arising in Parliament, it is properest he be tried in Parliament.”—Mr. Boscawen says, “No Commoner can be tried by the Lords, but by “impeachment of the Commons.”—It appears that Sir J. Trevor, Sir Francis Widdington, and Serjeant Maynard, concurred in this proceeding.—Grey’s Debates, Vol. VIII. p. 257.

† When this impeachment is carried up to the Lords, on the 7th of January, the message

proceeds to say, “That in due time the Commons will bring up articles to make good “their impeachment.”—It appears from Grey’s Debates, that Lord Tyrone was at this time a prisoner in the Gatehouse.

‡ Mr. Secretary Jenkins was much offended at being appointed to carry up this message, and said, “The sending me up with this “impeachment, reflects upon his Majesty my “master, in the character I bear under him— “and I will not go on the message.” This refusal to obey the orders of the House raised a great heat; and Mr. Secretary was on the point of being sent to the Tower, but was prevailed upon to ask pardon of the House, which he did; and declared himself ready to obey the orders of the House.—Grey’s Debates, Vol. VIII. p. 305.—See more of this gentleman in the note to p. 27 of the 3d Volume of this work.

I M P E A C H M E N T.

II. *Proceedings in the House of Commons, previous to carrying up the Charge.*

1. **W**HEN the Commons had resolved to accuse Sir Giles Mompeffon to the Lords, they immediately, on the 28th of February, 1620, committed him to the custody of the Serjeant at Arms, in order to be forthcoming. But he escaping out of custody, the Commons acquainted the Lords with this circumstance; and they, on the 3d of March, give orders to the Lord Warden of the Cinque Ports, to the Lord President of Wales, and to the Lord President of the Council of York, for search to be made, and to apprehend and bring him before them. And the like directions were given to the Lord Treasurer and Lord Admiral, for the same orders to be given by them to the Officers under their jurisdiction*.

2. On the 18th of April, 1621, upon a report from a Committee, of evidence of bribery and corruption, against Sir Jo. Bennet, a Member of the House, in his capacity of Master in Chancery, and Judge of the Prerogative Court of Canterbury †—the charges are

* There was also a Proclamation sent forth by the King for apprehending Sir Giles Mompeffon, and bringing him to the Tower.—Which see in Rymer's Fœd. Vol. XVII. p. 284.

† In a debate, on the 20th of April, upon this matter, Mr. Pym says, "The two Houses of Parliament were anciently but one, but being divided, the power was divided also; the power of inquisition was left to this

"House, that of judgment was left in most cases to the Lords.—But in some cases this House is not barred;—that the power of execution is in us with the Lords;—that we should reserve this power of inquisition, in this business, wholly to ourselves."—See Parliamentary Proceedings, 1620-1, Vol. I. p. 283.

drawn out, and the heads of them are sent to him ; and time is given to him to answer.—On the 23d of April he is heard by Counsel at the Bar.—He is then ordered to be committed to the custody of the Sheriffs of London, for his forthcoming, and is expelled. And on the 24th of April, he is charged before the Lords, at a Conference held for this purpose.

3. On the 5th of April, 1624, Sir Miles Fleetwood charges the Lord Treasurer, Sir Lionel Cranfield, then Earl of Middlesex*, with taking bribes. His charge is delivered in and read ; and referred to the Committee of Grievances, who are to examine it immediately ; and notice to be sent to the Treasurer, that somebody from him may attend the Committee this afternoon.—On the 9th of April, Sir Edward Coke reports the matter under one head. Copies of further charges are sent to the Lord Treasurer, and the Committee are to sit the next day to examine them : but, at his desire, further time is given him to answer. Sir Edward Coke reports on the 12th of April ; and the House resolve, That there is good ground for some of the charges of bribery ; and that these, with the other charges, for converting wardships, and extorting fees, be presented to the Lords. And a Committee is appointed to reduce them into form, and present to the House the frame and model. Sir Edward Coke makes the report from this Committee on the 15th of April.

4. On the 7th of May, 1624, Sir Edward Coke reports from

* This Lord Treasurer was Sir Lionel Cranfield, who, Mr. Hume says “ had been raised by Buckingham’s interest, from the rank of a London merchant, to be Lord High Treasurer of England ; and by his activity and address, seemed not unworthy of that preferment.—But, having incurred the displeasure of his patron, by scrupling or

“ refusing some demands of money, during the Prince’s residence in Spain, the Favourite vowed revenge, and employed all his credit among the Commons, to procure an impeachment of the Treasurer.” History of James Ith, Ch. 5.—See the note to N^o 2. in the title “ Commons demand judgment,” in this chapter.

the Committee of Grievances, several complaints against the* Bishop of Norwich. The House resolve to transmit them to the Lords, at a Conference, but first to digest and present them to the House in writing; which is done the next day, and allowed. —On the 19th of May, Sir Edward Coke makes a report of what passed at the Conference†, That he had delivered the charges, consisting of six heads; and that the Lords had answered, “ That they would take such order therein, as should appertain to justice, and our satisfaction‡.”—On the 28th of May, Mr. Pym is ordered to collect the charge against the Bishop, and to present it to the House; which he does on the 29th, on which day the Parliament is prorogued.

5. On the 17th of April, 1626, Mr. Pym reports the business concerning Mountague’s books§, with the opinion of the Committee,

* This Bishop of Norwich was Dr. Samuel Harsnet, who, in 1628, was elected Archbishop of York. See his life in the *Biogr. Britannica*.

† But see this more at large in the Lords Journal of the 19th of May, with the Bishop’s answers to the several heads of charge:

The charges are as follow:

(1.) That the Bishop inhibited or disheartened preachers on the Sabbath-day in the forenoon.

(2.) That images were set up in the church, and one of the Holy Ghost fluttering over the front; and a marble tomb pulled down, and images set up in the room; and the Bishop blessed them that did it.

(3.) That he punished those that prayed not towards the East.

(4.) That he punished a Minister for catechising his family, and singing psalms.

(5.) That he used extortion many ways.

(6.) That he did not enter institutions, to the prejudice of patrons.

‡ The Lords, upon receiving the report of the charge, and hearing the Bishop’s answers, resolved, from the multiplicity of business in which they were then engaged, to refer the examination of it to the High Commission Court; and nothing further appears upon this subject in the Lords Journals.

§ One of these books had been complained of as long ago as the 13th of May, 1624, as fraught with dangerous opinions of Arminius, contrary to the articles established; and the House had then ordered the Archbishop of Canterbury to be acquainted with it, and the message to be delivered to him by several Members.—In the next Parliament, on the 7th of July, 1625, Mr. Recorder reports the Archbishop’s answer to the message; and notice is then taken of another book, written by the same Mountague, intitled, “ *Appello Cæsarem*.” The House resolve this last to be a contempt of the House; and commit him to the Serjeant, to be forthcoming in the next Session of Parliament; when it is determined

mittee, That he stands convicted of all the three heads of the charge ; and that, as a public offender against the peace of the Church, he be presented to the Lords, there to receive punishment according to his demerits.—The House resolve to put off the consideration of this matter for three days ; and that he should have notice to be heard here, if he will.—On the 29th of April, the charges are read and agreed to ; and are ordered to be transmitted to the Lords, for their judgment upon them.

6. On the 25th of March, 1626, a report is made from the Committee for Evils, Causes, and Remedies, containing several resolutions of the evils under which the nation suffered, and of the causes of those evils ; which last all center in the Duke of Buckingham. The House fix a day for taking this report into consideration, and order the Duke, then Lord High Admiral, to have notice given him of it *. On the 20th of April, the House resolve

to charge him before the Lords. Mr. Mountague is accordingly brought to the Bar, and kneeling, Mr. Speaker pronounces the judgment accordingly.—On the 9th of July, the king sends word, That, Mountague being his Chaplain, he had taken the cause into his own hands, and wished the House to enlarge him.—The House return for answer, by Mr. Solicitor, That they had committed him only for his contempt to the House, and that the Serjeant had already set him at liberty upon bail.

* The King, alarmed at this attack upon his favourite Minister, sends, on the 28th of March, for both Houses to attend him at Whitehall, when the Lord Keeper, by his Majesty's direction, makes a speech to them—which see in the Parliamentary History, Vol. VI. p. 444.—Amongst other very extraordinary passages in this speech, the following gave very great offence: " With regard to " the Duke of Buckingham, it is his Majesty's

" express and final commandment, That you
" yield obedience unto those directions, which
" you have formerly received, and cease this
" Unparliamentary inquisition."—To which the
King adds for himself, " Indeed I think it
" more honour for a King to be invaded, and
" almost destroyed, by a foreign enemy, than
" to be despised by his own subjects. Re-
" member ! that Parliaments are altogether
" in my power, for their calling, sitting, and
" dissolution ; therefore, as I find the fruits
" of them good or evil, they are to continue
" or not to be."—On the 30th of March,
the Lords desire a present meeting of a Committee of both Houses, because some Lords have power to make explanation to the Commons of some expressions in his Majesty's speech, and in the Lord Keeper's. This conference is held in the Painted Chamber, between the Grand Committee of the whole House, and the Committee of the whole House

olve to proceed in this matter from day to day, setting all other business aside till this be finished; and a Select Committee is appointed * to reduce the state of the matter into form, and to search for, and make use of and apply, precedents for it. On the 22d of April, several other charges are reported against the Duke, and he is directed to have notice of these; and a day is fixed for his appearing, and making his defence, if he please to make any. To which message he replies, on the 24th, That he could give no answer till he had acquainted the Lords with it, and asked their leave; and now, having so done, their Lordships had refused him leave. Upon the Duke's not attending, the House come to several resolutions, That the Duke was the cause of the several evils therein specified.—On the 27th and 28th of April, and 1st of May, several other charges are agreed to, and annexed; and on the 2d of May, it is agreed to transmit the charges agreed to, to the Lords.

7. On the 14th of May, 1628, Mr. Pym reports from the Grand Committee for Religion, the business concerning Mr. Mainwaring for the matter contained in two sermons; and it is resolved, That this complaint, and these crimes, be transmitted to the

House of Lords. It is reported by Sir Dudley Digges, the next day; when, notwithstanding his Majesty's explanation, as made by the Lord Duke, the Lord Chamberlain, and the Lord Conway, and the Lord Duke's Apologetical Narration, the House resolve, "That an answer shall be sent to his Majesty, that our proceedings have been Parliamentary; and a remonstrance to his Majesty of our privileges." This remonstrance was presented on the 5th of April, 1626, and is inserted in the Appendix to this volume, No 5.—See Parliamentary History, Vol. VI. p. 451, et subf.

* Mr. Glanville, from this Select Committee, acquaints the House, on the 24th of April, That they understand some exceptions had

been taken, by some Members of the House not named upon the Committee, against their keeping their examinations private, without admitting other Members; and a debate arose in the House, "Whether Members, not of a Select Committee, may come to the Select Committee?" It is resolved, "That at the examination of witnesses, any Member of the House may be present; but the Select Committee only are to send for the witnesses, and examine them." And it is ordered, "That no Member of the House shall be present at the debate, disposition, or penning of the business by the Select Committee, but only to be present at the examination, and that without interposition."

Lords;

Lords; and a Committee is appointed to draw up the charge. On the 27th of May, the charge is reported, and ordered to be ingrossed and presented to the Lords.—Mr. Pym is to deliver the charge, and to strengthen the same, and several assistants are appointed.—On the 31st of May, the House being informed by a Member that Doctor Mainwaring desired to be heard here, leave is given to him to attend on the 2d of June, if he will, to make his defence, and that he shall be then heard *.—On the 4th of June, a Conference † is desired with the Lords upon this charge.—On the 12th of June, a further message is sent to the Lords touching this business ‡,

8. On

* I do not find that Doctor Mainwaring ever availed himself of this permission, or that he was heard before the House of Commons.

† See the report of this Conference, and the manner of Mr. Pym's delivering the charge, in the Lords Journal of the 9th of June, 1628; upon which report Doctor Mainwaring is immediately ordered to be taken, and kept in safe custody, by the Serjeant at Arms attending the Lords.—On the 10th of June some witnesses, that had been examined, not proving the charge, and Mr. Pym having delivered in the names of some Members of the House of Commons who could give evidence, the Lords send to the Commons for leave for them to attend; which is granted.

‡ This message appears, from the Lords Journal of the 12th of June, to have been sent, from its appearing that the book complained of, had been "printed by the King's command," and was to desire the Lords to enquire, by what means this command was obtained; and, when the Lords shall have found the party who gave the warrant, the Commons demand to have him punished with as much severity, or more, than Doctor Mainwaring himself.—Upon examining into this matter, on the 12th and 14th of June, it came out that Doctor Laud, Bishop of Bath and Wells, had signified the *King's express command* to the Bishop of London, that the sermon should be

printed.—And this declaration of the King's pleasure, confessed by Bishop Laud, is confirmed by the Earl of Montgomery, the Duke of Buckingham, and the Earls of Suffolk and Dorset, who protested on their honours, "That they had since heard his Majesty affirm as much."—Notwithstanding this, the Lords, on the 16th of June, address the King, that he will order this book to be burnt, and will give directions for prohibiting the printing of it.—To which address, on the 18th of June, the King returns for answer, "*That he is well pleased at the Lords request to suppress the book, and to forbid its being printed again, and has ordered a proclamation accordingly.*"—The tenets advanced by Dr. Mainwaring, in these sermons, which were "first published by the King's express command," signified by Bishop Laud, and which "the King was afterwards well pleased to order to be suppressed," were these:

1. That in matters of supplies, in cases of necessity, the King had right to order all, as seemed good to him, without consent of his people.

2. That the King might require loans of his people, and avenge it on such as should deny.

3. That the subject hath property of his goods in ordinary; but, in extraordinary, the property was in the King.

8. On the 10th of April, 1628, a Mr. Vivian presents a petition against Mr. Mohun, afterwards Lord Mohun, complaining of his conduct (it should seem, as Deputy Warden of the Stannaries) in extending his power beyond its due limits, granting writs of privilege, &c.—This petition, on the 16th of April, is referred to the examination of a Committee; and on the 27th of May Sir John Eliot reports the facts.—On the 28th Lord Mohun is to have notice, to be heard to make his answer to this charge, if he will—and a Committee is appointed to draw up the charge.—On the 30th of May, Lord Mohun sends word, That he chuses to make his defence with the Lords, and expecteth the transmission of the charge thither, when he will answer with all convenient speed.—On the 14th of June the charge is read, allowed, and ordered to be ingrossed.—On the 20th of June the witnesses are discharged; and on the 26th the Parliament is prorogued.—In the next session, on the 27th of January, 1628, a motion is made for reviving the order, for transmitting the charge against Lord Mohun to the Lords; but the consideration of that motion is put off for a day or two; and on the 30th a warrant is ordered for witnesses to attend to justify their former testimony.

It may not be improper to add to this note, That, within a few days after this transaction, Bishop Laud was translated to London; and, in 1635, Doctor Mainwaring was made Bishop of St. David's—and this, though one of the articles of the judgment pronounced against him was, "That he shall be for ever disabled to have any ecclesiastical dignity, or secular office." On the 18th of April, 1640, in the next Parliament that met after this transaction, the Lords took up this business again; and, having read the declaration of the Commons against the now Bishop of St. David's, and the sentence of the Lords, they refer the whole to their Committee of Privileges, with leave to the Bishop to allege any thing before the said Committee, on his part, either by

pardon, licence, or otherwise. On the 21st of April, they order the records to be brought, that the House may determine this cause.—But on the 28th of April, the King sends a message by the Lord Keeper, "That his Majesty, understanding there was some question concerning Doctor Mainwaring, now Bishop of St. David's, had given command that the said Doctor Mainwaring shall not come and sit in Parliament, nor send any proxy to the Parliament."—Thereupon, it was ordered to be entered so.—Lords Journal.—I do not recollect to have seen this last very extraordinary (and illegal) exercise of the King's authority taken notice of in any history.—See further, Commons Journal, the 23d of February, 1640.

9. On the 11th of November, 1640, Lord Strafford is accused of high treason, by a message sent to the Lords *.—On the 21st of November, articles offered by a Member of the House, against the Earl of Strafford, are referred to the Committee that are to draw up the charge against him.—On the 24th of November, Mr. Pym reports the articles †; the title, and every particular article of the charge, and the conclusion, and the addition to the conclusion, are distinctly read, and severally put to the question; and every particular of them resolved upon vote by the House.—They are then ordered to be ingrossed—and Mr. Pym to carry them to the Lords.—On the 25th of November, being ingrossed, they are again openly read in the House, and on that day delivered by Mr. Pym to the Lords, at a Conference ‡.

10. On the 7th of December, 1640, Mr. St. John reports from the Committee on Ship Money, several resolutions against those Judges, that had given their opinions in that matter; and Members are ordered to attend them, to ask, how they were solicited or threatened, and in what manner, and by whom, to give their judgment §.—On the 8th of December, a Committee is to prepare a charge

* It appears, That on the 6th of November, when the question was put, upon the motion of Mr. Pym, "Whether the Irish affairs should be referred to a Committee of the whole House?" this was considered as laying the foundation for a charge against the Earl of Strafford; and that his friends therefore debated long against it; but that, upon a division, the question was carried by 165 to 152.—Notice of this was immediately sent down to him, by express, into Yorkshire; with advice rather to continue there at the head of the army, than to come up and abide the test of Parliament. He determined upon the latter.—See Rushworth's account of this, and of the motives which induced Lord Strafford to take this step, Vol. VIII. p. 1.

† Whilst this report was reading, The outward room was cleared; and the keys of the outward door and house doors were brought up to the Clerk's table.

‡ See these articles, and the proceedings upon them, in the Lords Journal of the 25th of November, 1640.

§ In the 1st vol. of the State Trials, p. 483 to 495, are to be found all the proceedings upon this subject; from the commencement of the trial between the King and Mr. Hampden, to the exhibiting the articles against the Judges, for the opinions they delivered on this occasion. On the 26th of February, 1640, the judgment given against Mr. Hampden, in the Exchequer Chamber, and all the Rolls in the several Courts, of King's Bench, Common Pleas,

charge against the Lord Keeper and the other Judges for this offence.—And, on the 22d of December, a message is sent to the Lords, to desire *, that these Judges do, by themselves and others, put in good security to abide the judgment of Parliament; for that there are informations, and several proceedings in examination, of crimes of a high nature against them in this House.

11. On the 16th of December, 1640, a Committee is appointed to examine how far Archbishop Laud has been an actor in the great design of the subversion of the laws of the realm, and of the religion; and to prepare and draw up a charge against him.—On the 18th of December a message is sent to the Lords, to accuse the Archbishop of high treason, in the name of this House, and of all the Commons of England, and to desire that he may be forthwith sequestered from Parliament, and be committed.—And that within

Pleas, Exchequer, Star Chamber, and Chancery, were all brought into the House of Lords, and it was ordered, That a *Vacat* be made of the said several records; which was accordingly done the next day the 27th of February, when the Lords resolved, *Nemine contradicente*, “That the resolutions of the Judges, “touching the shipping-money, and the “judgment given against Mr. Hampden in “the Exchequer, and all the proceedings “thereupon, are against the Great Charter, “and therefore void in law.”—In Hilary Term, the 16th Charles I. in the case of *Chambers v. Sir Edward Brumfield*, late Mayor of London, “on an action of trespass “of false imprisonment; The defendant justified, by virtue of the King’s writ, for not “paying money assessed towards finding a “ship. After argument, it was moved to “have judgment, because it had been voted “and resolved in the Upper House and the “House of Commons, *nullo contradicente*,

“That the said writ, and what was done by “colour thereof, was illegal; *therefore* the “Court would no further dispute thereof, but “gave judgment for the plaintiff.” Croke’s 3 Reports, p. 601.—See in Rymer’s *Fœd.* Vol. XX. p. 56, the form of this writ for levying ship-money, with a list of the several counties, cities, towns, and places to which it was directed; the size and tonnage of the ships, the number of men, and the quantity of ammunition, wages, and victuals, required from each.—There is a memorandum, “*Quod 27 die Feb. 1640, istud irrotulamentum, et omnia et singula in eodem contenta, et expressa, vacantur, per judicium Dominorum Spiritualium et Temporalium in curia Parliamenti.*” Per me, Joh^m Browne, Cler. Parli^{um}.”

* See in the Lords Journals of the 22d and 23d of December, the proceedings upon this message, and the form and nature of the recognizances in which the Judges were severally bound.

some convenient time the House will resort to their Lordships with particular articles and accusations against him*.

12. On the 19th of December, 1640, a message is sent to the Lords, That the Commons, having certain informations of a high nature against Matt. Wren, Bishop of Ely, and having likewise information that he endeavours an escape, desire, that there may be some care taken, that he may give good security for his abiding the judgment of Parliament.—The Lords, immediately upon receiving the message, order the Bishop of Ely to put in sufficient bail for ten thousand pounds for his forthcoming, and abiding the censure of Parliament†.—On the 5th of July, 1641, the articles against the Bishop are agreed to, and ordered to be ingrossed; which are delivered at a Conference on the 20th of July‡.

13. On the 21st of December, 1640, resolved, That John Lord Finch, Lord Keeper of the Great Seal, shall be accused by this House, in the name of all the Commons of England, of high treason, and other great misdemeanors; and a message is sent by Lord Falkland for this purpose§, and to desire that he may be
forthwith

* See the form of the delivery of this message, and the proceedings of the Lords (who immediately comply with the request of the Commons) in the Lords Journal of the 18th of December.

† See, in the Lords Journals of the 19th and 23d of December, the form of taking the Bishop's recognizance and bail.—See a similar message and proceeding, respecting Pierce, Bishop of Bath and Wells, on the 24th of December.

‡ When the articles of impeachment are delivered against the Bishop of Ely, the Commons, at the same Conference, communicate resolutions to which they had come, "That Matt. Wren, Bishop of Ely, is unfit and un-

"worthy to hold or continue any spiritual promotion or office in the church or commonwealth. And they desire the Lords to join with them, to move his Majesty, that the said Bishop of Ely may be removed from his person and service;" but they desire, that these should be considered only as their opinion, and not as a matter upon him.

§ This message was not carried up to the Lords till the next day, the 22d of December, owing, as Lord Clarendon suggests, to the debate being purposely protracted, on the 21st so late, that the Lords were then risen.—In the interval the Lord Keeper withdrew himself, and soon after went into Holland.—On the 21st of December, previously to the House

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forthwith sequestered from Parliament, and committed; and that, within some convenient time, this House will resort to their Lordships with particular accusations and articles against him.—The Lords immediately resolve to sequester and commit the Lord Keeper; but, he being missing, they send a message to the Commons, That they will commit him when he is found.

14. On the 24th of December, 1640, the Committee on Lord Strafford's business have power given them to examine witnesses concerning Sir George Ratcliffe, and to prepare a charge against him, and to present it to the House.—On the 29th of December, these articles of charge are read—the House then resolve, (1.) That he be accused of high treason, in the name of all the Commons of England;—(2.) That these articles shall be the ground of this accusation;—(3.) That a message be sent to the Lords to accuse him of high treason, in the name of this House, and of all the Commons of England; and that the Commons will speedily

coming to the resolution to impeach him, he was, at his own desire, admitted into the House of Commons, where he spoke for a long time.—Whitelocke, who was present at this scene, says, "Many were exceedingly taken with his eloquence and carriage; and it was a sad sight to see a person of his greatness, parts, and favour, to appear in such a posture, before such an assembly, to plead for his life and fortunes."—Whitelocke's *Memoirs*, p. 38.—The Lord Keeper's speech is printed in the *Parliamentary History*, Vol. IX. p. 126; in which he says, speaking of ship-money, "I was neither the author nor adviser of this measure; and will boldly say, that, from the first to this hour, I never did advise nor counsel the setting forth any ship writs in my life."—Lord Clarendon attributes the advising this illegal measure to Noy, the Attorney General, "Noy was a very able and learned man; he had an affected morosity, which, though it made him unapt

to flatter other men, rendered him the most liable to be grossly flattered himself, that can be imagined.—And by this means, the great persons who steered the public affairs, by admiring his parts and extolling his judgment as well to his face, as behind his back, wrought upon him by degrees to be an instrument in all their designs.—And he, (thinking that he could not give a clearer testimony, that his knowledge of the law was greater than all other men's, than by making that law, which all other men believed not to be so) moulded, framed, and pursued the odious and crying project of soap, and with his own hand drew and prepared the writ for ship-money; both which will be the lasting monuments of his fame.—In a word, he was an unanswerable instance, how necessary a good education and knowledge of men is, to make a wise man, at least a man fit for business."

Hist. of the Rebell. Vol. I. Book i. p. 57.

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bring articles against him*, and, (4.) That these articles be ingrossed against to-morrow morning, and be sent to the Lords as a charge against him.—These articles, when ingrossed, are twice read on the 31st of December, and delivered to the Lords at a conference†.

15. Notwithstanding the absence of the Lord Keeper Finch, and that he could not be found, the Commons, on the 5th and 11th of January, 1640, proceed to draw up the charge and articles against him; and on the 13th resolve, “That there may be such proceedings against the late Lord Keeper, notwithstanding his absence, as in cases of the like nature are desired against other men.” On the 25th of January, it is moved in the House of Lords, That a proclamation be issued, whereby the Lord Keeper Finch, being accused of high treason by the House of Commons, may take notice of it, and come in at a certain day to his trial.—This motion is on the 26th referred to the Committee for Judicature.—And on the 6th of February, the proclamation is ordered to be prepared for his appearance; or else that proceeding be against him for the default of his not

* The Lords take notice, upon the delivery of this message, on the 29th of December, that the Commons did not desire, That Sir George Ratcliffe should be committed to safe custody, they therefore send a message to the Commons, by the Master of the Rolls and Judge Reeves, to know, whether they do expect that their Lordships should presently make safe his person.—The Commons immediately return an answer, That they gave no such instructions to their messengers, because Sir George Ratcliffe is already in safe custody in the Gatehouse (he had been committed thither by the Commons on the 9th of December) and they intended to have acquainted their Lordships with this, when they had produced the articles against him, which would be shortly—but that they now refer to their Lordships what to do in it, and to put this cause under

examination secretly and speedily.—The Lords reply, That they will send for Sir George Ratcliffe, and take order for his safe custody. He was accordingly, the same day, the 29th, sent for from the Gatehouse, and brought as a delinquent to the bar: And it was then ordered, That he shall be committed to the Gatehouse upon this accusation of “High Treason” by the Commons, there to remain in sure and safe custody, till further orders.

† See, in the Lords Journal of the 31st of December, these articles, and Mr. Pym’s speech on delivering them, with the further proceedings of the Lords in allowing him counsel, and examining witnesses against him.—On the 30th of January, the Commons resolve upon further articles, which are ingrossed, and delivered to the Lords at a conference on that day.

appearing *.—See this proclamation in the Lords Journal of the 13th of February.

16. On the 6th of March, 1640, the charge and impeachment of misdemeanors against Dr. Cofins, and others, are read. Some of the articles are agreed to, one disagreed to. On the 9th of March, the rest are agreed to, and ordered to be ingrossed.—On the 11th, the ingrossed articles are again read, and ordered to be carried to the Lords.—On the 16th of March, they are delivered to the Lords at a Conference; when the Lords immediately order Dr. Cofins, and all the rest of the parties named, to be sent for by the Gentleman Usher, and to appear on the 18th, to receive such further commands as the House shall please to order.—On the 18th of March, the Lords order, that Dr. Cofins, and the others named in the impeachment, being now in custody of the Gentleman Usher, do put in bail † to-morrow morning, to abide the judgment of Parliament ‡.

17. On the 31st of May, 1641, Mr. Hyde, from the Committee

* On the 9th of March, 1640, it is moved in the House of Lords, that some signification be made to the House of Commons, "That if the Lord Finch comes not in, and appear here according to the proclamation, then they may proceed against him in their accusation of high treason;" which the House approve of.

† See, on the 20th and 30th of March, in the Lords Journal, the form and nature of the security entered into by Dr. Cofins, and the others—and, on the 14th and 28th of July, 1641, the proceedings of the Lords in the hearing of this matter.

‡ On the 19th of May, 1641, upon a complaint made to the Commons by the parishioners of the parish of St. Gregory's, London, against *Inigo Jones* for pulling down their church; a charge is formed, and sent up

to the Lords.—On the 10th of May, 1642, the Lords send word, That they have appointed Friday next, to hear *the cause* between Inigo Jones and the parishioners—upon which, the Commons appoint several Members to manage the evidence against Inigo Jones, before the Lords, *upon the impeachment of the Commons*: but on the next day, the 11th of May, the Commons resolve, "That, in this case of St. Gregorie's, (in respect it is *no impeachment*, but a declaration of the injuries done to the parishioners, and of their private interest), no Members do attend the management of it in the House of Lords."—On the 16th of May the Lords order the parish church of St. Gregory's to be speedily rebuilt, which probably put an end to the dispute.—See a full account of this transaction, in *Inigo Jones's Life*, in the *Biographia Britannica*.

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about the Judges, reports the several charges.—And the articles of impeachment against Judge Berkley, for “High Treason*,” were read and agreed to, article by article, and ordered to be ingrossed.—See the same proceeding, in the case of Lord Chief Justice Brampton, on the 29th of June, and of the Lord Chief Baron Davenport, on the 1st of July †. On the 2d and 3d of July, the articles are sent to the Lords, with a desire that the Judges may make answer to their several impeachments ‡.

18. On the 30th of July, 1641, a Committee is appointed to prepare an impeachment against the Bishops, the Makers of the new Canons and Oath, upon the votes that have passed both Houses, concerning those Canons and Oath.—The report is made on the 3d of August; and on the 4th the form of the impeachment is agreed to; and the articles are carried up by Mr. Serjeant Wylde on that day §.

19. On

* The nature of the treason of which Judge Berkley was impeached, appears from Rushworth’s Collection, Vol. IV. p. 318, to have been “for endeavouring to subvert the fundamental laws and established government of the realm of England; and, instead thereof, to introduce an arbitrary and tyrannical government, against law; which he hath declared by traitorous and wicked words, opinions, judgments, practices, and actions.”—In his argument in the case of ship-money, Judge Berkley had said, “I never read nor heard, that *Lex* was *Rex*; but it is common and most true, that *Rex* is *Lex*; for he is *Lex loquens*, a living, a speaking, and an acting law; and, because the King is *Lex loquens*, therefore it is said, *Rex censetur habere omnia jura in scrinio pectoris sui*.” State Trials, Vol. I. p. 603. —In the Lord Say’s case, which is reported in Croke, Vol. III. p. 524, the Court would not permit Mr. Holborne, Lord Say’s counsel, to argue against the judgment given in the Exchequer Chamber against Mr. Hampden,

to which Lord Say had not been a party; Brampton, Jones, and Berkley saying, “That such a judgment ought to stand, until it were reversed in Parliament; and none ought to be suffered to dispute against it.”

† Before the impeachments against these Judges are carried to the Lords, the Commons resolve, on the 1st of July, That the Members, to whose care they are committed, do take care that some consideration may be had, for reparation and satisfaction to be given to the parties grieved, and to make all expedition with the impeachments, and then to go by Bill—and in the Bill to set the fines certain.

‡ On the 5th of August, 1641, the Lords, at the desire of the Commons, communicated at a conference, resolve, That the “peccant” Judges shall not be named in the commissions for the circuits; for, “that for them, being thus impeached, to become judges of men’s lives and estates, would be a thing of great offence and distraction.”

§ These articles were not communicated at a Con-

19. On the 5th of August, 1641, the House resolve to take into consideration the articles against Mr. Jermyn, Mr. Piercy, and others; and to consider what title to give them *.—On the 12th of August, the articles are taken into consideration; and the House resolve

a Conference, but carried up to the Bar of the House of Lords by Mr. Serjeant Wyldc, and delivered there.—On the 13th of August, further and more explicit articles of charge are carried up; and on the 27th of October, the Commons desire, That these thirteen Bishops may be excluded from voting in Parliament; and that *all* the Bishops may be suspended from voting on the Bill then depending, relating to the clergy.—The following circumstances relating to this prosecution, and to the Bill for excluding the Bishops from the House of Lords, are related in Ambrose Phillips's *Life of Archbishop Williams*, p. 277—280. “From this time the Bishops durst not come near the Parliament House, either by land or water; the passages were so beset against them, and they so vehemently threatened by the people. Upon this, the Archbishop of York, with eleven more of his brethren, met the next day at his lodgings. There he drew up a petition and protestation, first to crave protection, and, upon want thereof, a positive declaration, that whatever was done at the Lords House, during their forced and involuntary absence, was invalid and of none effect. The other Bishops, relying upon York's great knowledge in the laws, did, at his request, set their hands to it. And the Lord Keeper Finch, when he saw it, did profess, that it was the strongest and the fullest of law of any that he ever saw in his life. For the Bishop had modelled it exactly by one of the same nature, that he had found in the records in the Tower.”

Upon presenting this petition and protestation (which is entered in the Journal of the 30th December, 1641), the Bishops, who signed it, were impeached by the Commons of

High Treason, and thereupon, by the Lords, committed to the Tower.—“Whilst the Bishops were thus secured in the Tower, and scarce any body left to speak in their behalf, the Bill against them was brought in, and it passed currently in the House of Lords; for which they themselves afterwards suffered in the same sort from the Commons, as the Bishops did now from them.—The Lords temporal deprived the Bishops of their rights, and the Commons then excluded the Lords temporal from theirs.—Which consequence might have been foreseen, had they listened to the Marquis of Dorchester, who, upon the 21st of May, asked the Peers, Which of your Lords ships can say, he shall continue a Member of this House, when at one blow six and twenty are cut off?”—On the first day of the session, which was held on the 12th of April, 1540, The Mitred Abbots of the Religious Houses (who had always had seats in the House of Peers, and whose titles are entered in the Lords Journals, as being present, on the 28th of June preceding) first discontinued to sit there—though not formally or by name excluded by the Statute that had passed the year before, in the 31st Henry VIII. Ch. 13. intituled, “An Act for dissolution of Monasteries and Abbies.” Hume observes, “That when this Act passed the House of Lords, none of these Mitred Abbots made any protestation against it.”

* See Lord Clarendon's account of the plot, for which Mr. Jermyn and Mr. Piercy were accused.—*History of the Rebellion*, Vol. I. p. 210, et subf.; and [the Queen's account of this affair, as told by herself to Mad. de Motteville; *Memoires d' Anne d' Autriche*, Vol. I. p. 253 to 258.—This Mr. Jermyn was afterwards

resolve to charge them all severally with "High Treason."—See the 13th of August, P. M. and the 17th of December, 1641.

20. On the 17th of November, 1660, complaint being made of a book, intituled *, "The Long Parliament revived," and one Drake being named for the author—Drake was called in, and acknowledging himself to be the penner of the book, he is committed to the Serjeant at Arms; and a Committee is appointed to examine the book, and to state the offensive passages to the House. Mr. Serjeant Rainsford reports these passages on the 20th of November; on which the House resolve, (1.) That the pamphlet is seditious; and, (2.) That a Committee be appointed to draw up an impeachment against William Drake, the author; and that the said

terwards made Lord Jermyn, and, just before the Restoration, was created Earl of St. Alban's. It appears, from Lord Clarendon, that he was always in great favour with the Queen Mother, Henrietta Maria, and directed all her councils whilst she was abroad. Sir John Reresby, who was in her Court at Paris, in 1659, says, "Lord Jermyn, since St. Alban's, had the Queen greatly in awe of him; and indeed it was obvious, that he had great interest with her concerns; but that he was married to her, or had children by her, as some have reported, I did not then believe, though the thing was certainly so."

Reresby's Memoirs, p. 4.

* The doctrine contained in this book appears (from the extracts in the Commons Journal of the 20th of November, 1660, and from the articles, which are entered at length in the Lords Journal of the 6th of December) to have been, "That the Long Parliament was, by law, still the legal Parliament."—It appears from Vol. II. of this work, p. 280, that though that Long Parliament had been dissolved by an Ordinance issued from the Rump Parliament, yet that it was thought necessary, after the Restoration, by an Act of Parliament,

to declare, "That that Parliament, begun and holden at Westminster on the 3d of November, 1640, was fully dissolved and determined." The royal assent had been given to this Bill by King Charles II. on the 1st of June, 1660;—notwithstanding which, it appears, that, at the time Drake published this pamphlet, very considerable and legal doubts were still entertained upon this question; inasmuch that, on the 24th of May, 1661, (subsequent to this impeachment) the House of Lords thought proper to call upon the Judges to deliver their opinion upon it;—and on the 6th of June, they order the Attorney General to prepare a third Bill upon this subject, which he does accordingly.—So that the House of Lords (by giving orders to the Attorney General, on the 19th of December, 1660, to prosecute Drake in the Court of King's Bench) acted prudently, in availing themselves of any excuse, however trifling, for removing the trial of this supposed offence from themselves to a court of law.—The pamphlet is published at length in the 23d. vol. of the Parliamentary History, in the Appendix, p. 187.

Committee be appointed to draw up articles against the said William Drake.—Sir Heneage Finch immediately reports the impeachment ; and an order is made for continuing William Drake in custody.—On the 26th of November, the Solicitor General reports the articles, which are ordered to be ingrossed * ; and on the 4th of December are ordered to be carried to the Lords by Lord Falkland.

21. A Committee is appointed, on the 18th of December, 1666, for drawing up an impeachment against the Lord Mordaunt, for illegally dispossessing Mr. Tayleur of some apartments in the Castle at Windsor, and arbitrarily imprisoning his person. On the 21st of December, Mr. Prynne reports the articles †.—On the 22d they are ingrossed, and read ; and amended and agreed to ‡.

22. When the Committee is appointed, on the 26th of October, 1667, to look into precedents relating to the method of proceeding on impeachments, it was in consequence of a debate in the House, Whether the reducing the crimes, which had been alleged against

* See the articles at length in the Commons Journal, the 4th of December, 1660. They conclude, “ All which practices, for “ stirring up of sedition, the Commons are “ ready to prove, not only by the general “ scope of the said book, but likewise by “ several clauses therein contained, and by “ such other proofs as the cause, according to “ the course of Parliament, shall require.”—On the Committee who were appointed to frame these articles, were the Solicitor General Sir Heneage Finch (afterwards Lord Chancellor Nottingham) Sir Edward Turner (afterwards Chief Baron) Mr. Annesly, Mr. Hollis, Sergeant Glynn, Sergeant Maynard, and Sergeant Rainsford.

† These articles state all the circumstances of the violence offered to Mr. Tayleur by

the Lord Mordaunt ; and conclude, “ All and “ every which proceedings are contrary to “ the Great Charter, and other laws and statutes of this realm, and the rights and liberties of all the Commons and freemen of “ England, and of dangerous consequence and “ example if unredressed.”—There is a clause, reserving the right of the Commons to exhibit other articles, or any other impeachment or accusations (as the case shall, according to the course of Parliaments, require) ; and praying, That Lord Mordaunt may be called to answer the said several crimes and misdemeanors.

‡ See before, p. 111, the proceedings that were had in the next session, on Mr. Tayleur’s exhibiting another petition and further articles upon this subject.

Lord Clarendon by Mr. Seymour *, into heads, ought not to be preceded by an examination of witnesses †. So upon the report from the Committee appointed to draw up heads, on the 6th of November, a motion was made, and question put, "That the heads of the accusation brought in against the Earl of Clarendon, be referred to a Committee, to take the proofs and report," but passed in the negative ‡.—The heads are all then read §, as reported from the Committee, and debated generally on the 6th, 7th, and 8th of November; when the House come to a resolution, "That this House have sufficient inducement to impeach the Earl of Clarendon."—The heads were then read, one by one; and the opinion of the House taken upon each ||.—After which, on the 11th of

* It is said in Grey's Debates, Vol. I. p. 15, that Mr. Seymour, after having charged the Lord Chancellor in general, thus expressed himself, "He makes the earth groan by his building, as we have done under his oppression." This expression referred to a very large house which Lord Clarendon had lately built. "Some called it Dunkirk House, intimating that it was built by his share of the price paid by the French for Dunkirk."—Burnet's History, 1st vol. p. 249. Is it not extraordinary, that there are not now remaining the smallest traces of this magnificent palace? which Bishop Burnet says, cost £. 50,000 in building. It appears from a Plan of London, (which is preserved in the library of the Society of Antiquaries,) that this House stood on the North side of Piccadilly, exactly opposite St. James's-street; and occupied a very great space, which is now filled by Dover-street and Albemarle-street, and the buildings up to the West side of Bond-street.—These streets are described in Maps of London, published as long ago as in the reign of King William; Lord Clarendon's house could therefore have stood but for a very few years.

† See this debate in the State Trials, Vol. II. p. 554.

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‡ The division was 194 to 128, against referring the articles to a Committee.—Sir Edward Seymour, and Sir Thomas Osborne afterwards Duke of Leeds, were the tellers for the majority.

§ It appears, from the proceedings in Vol. II. of the State Trials, p. 558, that, as these heads were severally read, some Member of the House of Commons, in his place, stated to the House, "That several persons had undertaken to make that head good;"—or, "that the Member had heard this, from a certain great Lord"—or, "that this was too public to stand in need of proof"—or, in one instance, "that the Member did not doubt, but it will be made out."

|| This does not appear so clearly from the entries in the Journal, as from the proceedings in the State Trials, Vol. II. p. 562, et 563.—See also the debates upon this matter in Vol. I. of Grey's debates, p. 14 to 37.—From all which it appears, That Mr. Seymour having, on the 26th of October, charged the Earl of Clarendon, *viva voce*, with many great crimes, and a debate arising, what the proceeding ought to be, a Committee to search precedents was appointed, in consequence of this debate.—See, particularly, in Vol. II. of the State

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Trials,

of November, upon debate of the whole matter, the House resolve,
 “ That an impeachment of treason, and other high crimes and
 “ misdemeanors, be carried up to the Bar of the House of Lords,
 “ against the Earl of Clarendon.”

23. On the 25th of November, 1669, a petition of Sir Edward Fitz-Harris and a Mr. Alden, with several articles of impeachment against the Earl of Orrery, of “ High Treason,” and other high crimes and misdemeanors, were read *.—The House resolving that this charge against Lord Orrery contains treasonable matter †, he is ordered to be sent for in custody of the Serjeant.—On the 1st of December ‡ he attends; the articles are read, one by one; and on reading each particular article, he delivers in his answer thereto—and being withdrawn, a question is put, That a day be appointed for the accusers to produce witnesses to make good the charge—but passed in the negative; and the House order, that this accusation shall be left to be prosecuted at law.

24. On the 15th of January, 1673, articles of treasonable and

Trials, p. 554, the speeches of Sir Thomas Littleton, Mr. Serjeant Maynard, and Mr. Vaughan, upon the question, “ Whether the
 “ impeachment shall be first carried to the
 “ Lords, or, whether witnesses to support it
 “ shall be first examined ?”

* Neither the petition nor the articles are entered in the Journal; but it appears from *Grey’s Debates*, that Lord Orrery was at this time President of Munster, and that he and the Duke of Ormond were upon ill terms; and that this was the secret cause of this proceeding.—Lord Orrery was also a Member of the House of Commons.—The accusation was, “ for raising money by his own authority, and
 “ threatening, That if the King would not
 “ come into his measures, he had 50,000
 “ swords to compel him.”—*Grey’s Debates*, Vol. I. p. 182.—See in Mr. Solicitor General

Finch’s speech, p. 185, his dislike of impeachments, “ He never knew much good done in
 “ Parliaments, where many impeachments
 “ were.”

† It is said in *Grey’s Debates*, Vol. I. p. 184, but is not entered in the Journal, “ That during this debate, no Member was suffered to go out, without leave asked; and when obtained, he was enjoined by the Speaker not to communicate any thing that passed in the House.” See the note in *Grey’s Debates*, Vol. I. p. 186, explaining the history of this business.

‡ It appears from the Journal of the 1st of December, That he was placed in his seat, near the Bar; and being infirm, and unable to stand, was permitted to give in his answers, sitting in the House.

other

other crimes of high misdemeanors, against the Earl of Arlington, Principal Secretary of State, being opened and presented to the House*, they were delivered in at the Clerk's table, and read.—Lord Arlington, by letter to the Speaker, desires to be heard†; he is called in, and several questions being proposed to him from the Chair, he is heard; and, being withdrawn, the House debate this matter on the 16th; and on the 17th witnesses are examined.—On the 20th it is referred to a Committee to consider of the articles, and to report what matter is therein contained, and can be proved, that is fit for an impeachment; and they have power to send for persons, papers, and records.—On the 17th of February, the Chairman of the Committee reports, That the Committee were under difficulties, and desire the direction of the House, Whether proofs should be made before the Committee, or whether some one Member undertaking to produce persons to prove what is alleged, shall be admitted as

* It appears from Grey's Debates, Vol. II. p. 270, that these articles were presented by Sir Gilbert Gerrard.—In p. 275, is the substance of Lord Arlington's Defence, which he delivered in the House of Commons.—See also in the same volume, the debates on the several days, whilst this matter was under consideration.—It appears from these debates, and from those relating to the Duke of Buckingham, in the same book, p. 257, 258, that the term "*Cabal*" was (from taking the initial letters of their names) generally used, in the House of Commons, to distinguish this set of ministers; and, as Burnet observes, in Vol. I. p. 308, became from thence a technical word.—This junto consisted of *Clifford*,—*Ashley*—*Buckingham*—*Arlington*—*Lauderdale*.—Hume observes, "Never was there a more dangerous Ministry in England, nor one more noted for pernicious counsels."

† The Duke of Buckingham having, at his request, been admitted into the House of Commons, and heard on the 14th of January, and Lord Arlington on the 15th (for the forms

of which proceeding see Grey's Debates, Vol. II. p. 248) induced the Lords, on the 15th of January, 1673, to refer it to the Committee of Privileges to search the Journal, what hath been formerly the practice in such cases:—On the 20th of January, the Committee report, "That their Lordships have searched, and perused several precedents, and thereupon conceive, that it may deeply intrench into the privileges of this House, for any Lord of this House to answer an accusation in the House of Commons, either in person, or by sending his answer in writing, or by his counsel there;"—Upon serious consideration had thereof, and perusal of the said precedents, it is ordered, "That for the future no Lord shall either go down to the House of Commons, or send his answer in writing, or appear by counsel, to answer any accusation there, upon the penalty of being committed to the Black Rod, or to the Tower, during the pleasure of this House." And it is ordered, That this order be added to the Roll of the Standing Orders.

proof?—The House resolve, That it be re-committed to the Committee to proceed upon the articles, head by head; and to report particularly to the House, what proofs or inducements shall be offered to the Committee, fit for an impeachment, upon every head of the said articles*.

25. On the 26th of April, 1675, a charge or impeachment against Thomas Earl of Danby, Lord High Treasurer of England, containing several offences, crimes, and misdemeanors of a very high nature, being presented and opened to the House, and afterwards brought in, and delivered at the Clerk's table—they are read †.—The House then resolve to proceed, head by head, and to hear such proofs, instances, and circumstances, relating to each article, as are necessary to an impeachment.—On the 27th and 30th of April, and 3d of May ‡, the House hear evidence, and examine witnesses; and, upon the question severally put on each article, “Whether any fit matter doth appear, in the examination of this article, to impeach the Lord Treasurer?” they were all passed in the negative.

26. On the 1st of November, 1678, after a long examination into the matter of the Popish Plot, the House resolve that they

* Nothing further appears to have been done in this accusation.

† It appears from Grey's Debates, Vol. III. p. 41, that these articles were opened and presented by Sir Samuel Barnardiston.—The charges against Lord Danby were, (1.) The violating the method of the Exchequer; (2.) For causing a person to be illegally arrested and detained, with an intent to procure a great heiress to be married to his own second son. (3.) With receiving several large sums of money, which were wastefully spent, though the King's debts remained unpaid, the stores unfurnished, and the navy unrepaired. (4.) With stopping the

legal payments due in the Exchequer, (5.) The assuming to himself the management of the Irish affairs, though his own office of Treasurer was full of great and necessary employment. (6.) By procuring great gifts and grants from the Crown. (7.) Uttering this arbitrary expression in contempt of the law, “That a new proclamation is better than an old act.”—There is much debate about the mode of proceeding, “Whether to examine into the proofs, or to be satisfied with the undertaking of Members to prove them?”

‡ See what passed upon these examinations in Grey's Debates, Vol. III. p. 50, to p. 96.

will proceed by way of impeachment against the Lord Arundel of Wardour; and appoint a Committee to prepare and draw up articles of impeachment.—On the 5th of December, the House resolve to impeach the said Lord Arundel, Earl of Powys, Lord Bellasyfe, Viscount Stafford, and Lord Petre, of treason, and other high crimes and misdemeanors *.—Messages are sent immediately

to

* It appears from Grey's Debate, Vol. VI. p. 320, that the Grand Jury had already found Bills of indictment of high treason against these five Lords.—These Bills of indictment were brought into the House of Lords on the 29th of April, 1679, by a Writ of Certiorari, issued by order of the Lords.—In the debate, Whether to leave the proceedings against these Lords to trial by the common law, or, to proceed by impeachment? Mr. Solicitor General Winnington says, If you go not by way of impeachment, the King and the people will lose their right, by the 25th of Edward III.: That statute having great regard to the safety of men, does declare what shall be treason for the future; which is only a declaration of the common law, what was treason before that statute.—It does not alter the common law, but enumerates many particular cases, and leaves the declaration of more treasons, than are particularly expressed in that statute, to Parliament.—Whether trial or impeachment be the elder brother I cannot tell; but, I believe, trial of a Peer in Parliament is more ancient than by indictment."

Serjeant Maynard says, "If this had been only to murder the King, then the prosecution might have gone on in the ordinary course of justice; but this plot is to destroy religion and the government—I do not know but these things, if questioned in Parliament, may be declared treason.—There may be such exorbitant crimes, fit for Parliament to consider, that no ordinary Judge nor Jury can take notice of; but Parliament may.—It clearly appears, that there was a design to overthrow law, religion,

and the government; and that, in Parliament, would be declared treason.—Therefore it is better that way, than in the ordinary way of justice.—This concerns all the nation, and so is more proper for an impeachment."

Sir Edward Seymour, the Speaker, says,—
"The first step you make in this matter is, to determine your resolution to impeach.—The next is, the person whom you will impeach.—Then you are actually to go to the Lords Bar, and accuse the persons, and acquaint the Lords, that you will take time to make your charge out: and, if the persons accused be at large, to desire that they may be in custody.—But these Lords being in custody already, that is out of doors.—But you send not to other courts to stop proceedings—all courts do stop of course.—The Lords cannot proceed originally to trial, unless the without-doors matter be certified to them from the court where the indictment was found.—But if an impeachment be brought up from hence, all proceedings below cease."—Grey's Debates, Vol. VI. p. 323, et subseq.—The clause in the Statute of Treasons, the 25th Edward III. ch. 2. to which the Solicitor General and Mr. Serjeant Maynard refer, is expressed in these terms: "And because that many other like cases of treason may happen, in time to come, which a man cannot think or declare at this present time; it is accorded, That if any other case, supposed treason, which is not above specified, doth happen before any justices, the justices shall tarry, without any going to judgment of the treason, till the
" cause

to impeach these Lords, severally, at the Bar of the House of Lords; and that the Commons will, within convenient time, exhibit articles of charge: the Committee formerly appointed to prepare the articles against the Lord Arundel, are then ordered to prepare and draw up articles against the other Lords.—This Committee are empowered to send for persons, papers, and records.

27. On the 19th of December, 1678, the Committee appointed to draw up the articles of impeachment against the Lord Danby, are empowered to send for persons, papers, and records, and to receive any further information or evidence.—On the 21st of December, the articles are reported*; and being read, a question is put upon each article; they are then ordered to be ingrossed, with a saving liberty to exhibit other articles, and that he may be seques-

" cause be shewed and declared before the King and his Parliament, whether it ought to be judged treason or other felony." There have been different opinions as to the true construction of this clause, with regard to the mode of applying to, and obtaining the opinion of the King and the Parliament, upon any case that shall occur; and the operation, which such opinion, when obtained, should have upon such particular case. See Coke's 3 Inst. p. 21, Title "Petit Treason." Sir M. Hale says, "In my opinion, if new cases happen in the future, that have not an express resolution in point, nor are expressly within the words of 25 Edward III. though they may seem to have a parity of reason, it is the safest way, and most agreeable to the wisdom of that great Statute, *first to consult the Parliament, and have their declaration.*" And again, "The authoritative decision of these *casus omnes* is reserved to the King and his Parliament, and the most regular and ordinary way is to do it *by a Bill declaratively.*"—Hale's Pleas of the Crown, Vol. I. p. 132 and 259, ch. 14th and 24th.—See also Lord Chief Justice Bridgeman's speech in the

House of Lords, on the 14th of July, 1663, on this question, "Whether, on accusation for a crime that is not treason in *præfenti*, if such a Parliamentary declaration should pass, it would relate to the time past." State Trials, Vol. II. p. 553, where (I suppose by mistake) it is said the opinion of the Judges was delivered by the Lord Chief Justice Forster: The Journal of the Lords of the 13th and 14th of July, 1663, expressly mention the Lord Chief Justice Bridgeman, of the Common Pleas.

* See in Grey's Debates, Vol. VI. p. 366, the debate upon this report, particularly whether there had not been an irregularity in not assigning any time or place for the Committee to meet.—They had met, nine of them out of twenty-two, at Mr. Williams's chambers in Gray's Inn.—And upon this, a motion was made, "That the articles be re-committed," but passed in the negative, 179 to 135.—See Sir Harbottle Grimstone's speech, p. 379, as to what is treason at the common law, declarable by Parliament, though not one of the cases recited in the statute 25th Ed. III.

tered from Parliament, and committed to safe custody.—On the 23d, the saving clause is read, and ingrossed, and the articles are delivered on that day at the Bar of the Lords, by Sir Henry Capell, together with the message of impeachment.

28. On the 20th of November, 1680, Sir Gilbert Gerrard acquaints the House, that he had articles of impeachment of high crimes and misdemeanors and offences, against Edward Seymour, Esquire, a Member of this House, which he delivered in at the Clerk's table, and they were read *; Mr. Seymour is ordered to have a copy of the articles, and to deliver in his answer by the 25th of November †.—On the 25th, the articles are read, one by one, and Mr. Seymour makes his answer to each particular article in his place, and then withdraws.—The articles are debated separately on the 25th and 26th of November, and the House resolve ‡, That there is matter sufficient in each article to impeach Mr. Seymour.—A Committee is accordingly appointed to prepare the impeachment, who have power to send for persons, papers, and records §.—On the 17th of December, Sir W. Pultney reports from this Com-

* These articles against Mr. Seymour, related to his conduct as Treasurer of the Navy, and for receiving a sum of money annually of £. 3000, whilst he was Speaker, over and above his salary as Treasurer of the Navy.

† See the debate upon, Whether Mr. Seymour should be admitted to give in any answer, in writing, to the House of Commons.—Grey's Debates, Vol. VIII. p. 41.

‡ Before any question is put upon the first article, a motion is made, That the consideration of these articles of impeachment be referred to a Committee, but passed in the negative.—See in Grey's Debates, Vol. VIII. p. 88, what passed upon this question, particularly Mr. Finch's speech, who says, "There is a considerable difference between impeachments of treason and misdemeanor; prece-

dents are express in the case, as that of Sir W. Penn's; and you will hardly find one precedent of misdemeanor that has gone in a contrary way, but has been examined at a Committee." See Silas Titus's speech, p. 94, against referring the articles to a Committee.

§. A Committee is also appointed to consider of precedents concerning the committing a Member to custody, when impeached in Parliament.—On the 17th of December, this Committee make their report.—The report is not entered in the Journal, but is in Grey's Debates, Vol. VIII. p. 175; with the debate upon those precedents.—It appears from p. 181, that several Members immediately offered to become security for Mr. Seymour's forthcoming, to answer to the impeachment.

mittee,

mittee, That they had put the articles into the form of an impeachment; they were then twice read, and ordered to be ingrossed. And then Mr. Seymour is ordered to be taken into the custody of the Serjeant, for securing his forthcoming to answer to the impeachment. And the Serjeant is empowered to take security for his forthcoming.

29. On the 3d of January, 1680, the articles of impeachment against Sir W. Scroggs, Chief Justice of the Court of King's Bench, are reported*.—They are debated on the 5th of January, and a question is put upon each article, Whether Sir W. Scroggs be impeached upon the said article? They are then ordered to be ingrossed.—On the 7th of January, the ingrossed articles are read, and carried up to the Lords by the Lord Cavendish.—The Commons in these articles impeach Sir W. Scroggs of “High Treason” against the King, his crown and dignity, and other high crimes and misdemeanors †.

* In the protestation, saving to the Commons the liberty of exhibiting, at any time hereafter, any other accusation or impeachment against Sir W. Scroggs—the Commons pray, “That the said Sir W. Scroggs may be
“ put to answer to all and every the premises,
“ and may be committed to safe custody; and
“ that such proceedings, examinations, trials,
“ and judgments, may be upon him had and
“ used, as is agreeable to law and justice, and
“ the course of Parliaments.”

† See in the State Trials, Vol. VII. p. 488, a debate, on the 5th of January, on the construction of the clause in 25 Ed. III. which reserves to Parliament the power of declaring, whether any other case, not recited in that act, but supposed to be treason, be treason or felony—particularly the speeches of Mr. Daniel Finch, afterwards Earl of Nottingham, and Sir Francis Winnington, who differ in opinion, Whether this declaration

should be made by Bill, (that is, by Act of Parliament) or by the Lords, on the accusation of the House of Commons?—Serjeant Maynard and Mr. Powle take a considerable part in this debate, (as appears from Grey's Debates Vol. VIII. p. 238—249.) Serjeant Maynard says, “What treason is, no man can
“ define nor describe.—The statute of 25 Edw.
“ III. does not do it; but treasons are enumerated.—If another offence be committed,
“ the Parliament shall judge, whether it deserves the punishment of treason.—What
“ ever offence deserves the punishment of a
“ traitor, the Parliament may impeach, and
“ the Lords judge accordingly.—Here is a
“ design and intention to destroy the nation
“ and our religion; and people combine to
“ form companies and raise arms, and intend
“ to destroy the Lords and Commons: think
“ you, that this cannot be adjudged treason?
“ This case we now debate, is no case enumerated
“ rated

“ rated in the statute 25 Edw. III. but take
“ away that power of declaring treason in
“ Parliament, and you may all have your
“ throats cut.” Mr. Powle says, “ It is re-
“ solved on all hands, that the declaratory
“ power of treason remains in Parliament.
“ In the 11 Richard II. four or five Judges
“ were impeached for signing an extrajudicial
“ opinion against the Parliament.” (See
this proceeding in p. 53 of this Vol.) “ I take
“ all those precedents to be legal precedents,

“ and not to be excepted against.—I never
“ heard, but that the subverting the funda-
“ mental laws was *proditorie* in an impeach-
“ ment.”—Neither Mr. Finch, nor Sir
Francis Winington, nor Serjeant Maynard,
nor Mr. Powle, nor any other Member in that
debate, raise a doubt, Whether, if the crime
Sir W. Scroggs had committed, amounted to
high treason, he was not a proper object,
though a Commoner, of an impeachment
before the Lords.

III. *Form of delivering the Charge.*

1. **O**N the 1st of March, 1620, upon debate and consideration, touching the form of proceeding against Sir Giles Mompeffon, whose misconduct in several instances had appeared in evidence at the Committee of Grievances, it was resolved to go to the Lords, to propose to them, “ That, searching into grievances, “ the Commons had found one of such a nature, and so high a “ strain, both against the King and Kingdom, as never the like.”—Sir Edward Coke to be the messenger, and to desire a Conference upon this subject.—On the 3d of March, Sir Edward Coke reports, That he had been at the Lords, and demanded the Conference*; and had told the Lords, that the Commons had taken this course, (1.) Because it was warranted by precedent. (2.) Because they had a greater power to punish him. (3.) That they had a great interest in respect of their noble families and posterities.—The Lords agree to the Conference.

2. On the 17th of March, 1620, resolved, after debate, and several propositions made, That the complaints against Lord Chancellor Bacon, which had appeared upon examination before the Grand Committee for Courts of Justice, should be set down in writing, and presented to the Lords at a Conference.—This Con-

* It appears, from the Lords Journal of the 13th of March, 1620, that at this Conference the Lords demanded of the Commons the proofs of the grievances of which they complained, which the Commons delivered at another Conference, on the 15th of March.

ference is held on the 19th of March *.—On the 21st of March further heads of charge are sent †.

3. The charges against the Earl of Middlesex, Lord High Treasurer, are delivered at a Conference on the 16th of April, 1624, and are opened at large, with reference to the proofs, by Sir Edward Coke and Sir Edwyn Sandys ‡.

4. On the 29th of April, 1626, Mr. Pym reports, that the Committee thought the fittest way to transmit the charges against Mr. Mountague to the Lords, was by way of Conference.—But Sir Nathaniel Rich moves to have it done by Mr. Pym, not at a Conference, but by message § to be delivered at the Bar in the Lords House, where it may be more public.—And it was so ordered, to be delivered by Mr. Pym by way of message, as soon as he can be ready: and the exceptions to the books to be left there in writing.—On the 14th of June, the articles are ordered to be ingrossed.

5. On the 2d of May, 1626, it is resolved to transmit to the Lords the charges against the Duke of Buckingham.—On the 3d, eight Managers are appointed, with two Assistants to each of them, who are to agree upon the parts, and divide the business between

* See in the Lords Journal of the 20th of March, the Lord Treasurer Mandeville's report of this conference.

† Which see in the Lords Journal of the 22d of March.

‡ After stating all the charges, Sir Edwyn Sandys concludes, "These complaints, my Lords, are of a high Lord, the Lord Treasurer: but your Lordships are higher than he; the King higher; and God higher than all; whose justice your Lordships execute; which justice the Commons humbly and instantly demand of your Lordships, against these oppressions."—See the Lords Journal the 16th of April, 1624.

§ Sir Nathaniel Rich, adds, "That this was the ancient way, and so done in the 12th Jac. by Sir Edward Hobby, against the Bishop of Durham."—This must be a mistake of Sir N. Rich's, or of the Journal, as there was at that time no proceeding against the Bishop of Durham.—But it means the Bishop of Lincoln: as there was, on the 25th of May, 1614, in the 12th of Jac. 1st, a message sent to the Lords by Sir Edward Hobby, complaining of a speech of that Prelate.—See this case at length, in the 1st Vol. of this Work, p. 195.

them.—On the 6th of May, these several parts are arranged : And on the 8th, a message is sent to the Lords, to desire a Conference touching the impeachment and accusation of a great Peer.—The Lords decline a Conference, but appoint a meeting between a Committee of both Houses in the Painted Chamber *.—It is then determined, that at this meeting the articles shall be read, according to the direction of the charges, by one of the Assistants, and that then each Manager shall amplify and aggravate his part, and shall leave the proofs with the Lords.—On a motion made, That the Lords shall be moved to sequester the Duke, this debate is adjourned till the next day, when, on the 9th of May, the House resolve, upon a division of 225 to 106, to move the Lords, That the Duke of Buckingham may be committed to prison †.

6. On the 11th of November, 1640, resolved, That a message be sent from this House to the Lords, to accuse Thomas Lord Wentworth, Earl of Strafford, Lord Lieutenant of Ireland, of high treason, and to desire that he may be sequestered from Parliament, and be committed ; and that within some convenient time this House will resort to their Lordships with particular accusations and articles against him ‡.—These articles, when prepared and ingrossed,

are

* See, in the Lords Journals of the 13th and 15th of May, the report of the Conference at length, as opened by the several Managers, with the articles of impeachment ; at the end of which is a schedule of all the grants and gifts from the Crown to the Duke of Buckingham, for himself or to his immediate use. See also the Parliamentary History, Vol. VII. p. 44. The report of this Conference in the 3d Vol. of the Lords Journals, from p. 595 to p. 627, is extremely curious and worth reading.

† See the form of this message, by Sir Nathaniel Rich, in the Lords Journal of the 11th of May.—When this measure was first

proposed in the House of Commons, on the 8th, it was suggested, That the motion for commitment had better not be grounded on these articles, but upon the petition of Lord Digby, which had been presented to the House of Commons upon the 1st of May, and to which articles were annexed, containing high treason.—The Lords answer to the message for commitment is, That they will in due time take it into consideration, and return an answer by messengers of their own.

‡ See, in the Lords Journal of this day, the proceedings of the Lords upon this message.—They presently commit Lord Strafford to the custody of the Gentleman Usher, and sequester

are delivered to the Lords by Mr. Pym, at a Conference on the 25th of November *.

7. A similar message is sent to the Lords, on the 18th of December, 1640, respecting Archbishop Laud.—He is immediately sequestered from Parliament, and committed to the Gentleman Usher; it is not said, that he received this judgment, as the Lord Strafford did, upon his knees; but only that he was called to the Bar as a delinquent.—When the articles against him are delivered at a Conference, on the 26th of February, 1640, the Archbishop is immediately committed to the Tower †.

8. On the 12th of February, 1640, resolved, That Sir Robert Berkley, Knight, one of the Judges of the King's Bench, shall be accused ‡, in the name of all the Commons of England, of “High
“Treason,”

quester him from Parliament; and this determination of the Lords is pronounced against him, kneeling at the Bar.—The Lords then send a message to the Commons, by the two Chief Justices, to acquaint them with what they have done.

* Mr. Pym, before he went up to the Lords, on the 25th of November, made a short declaration of what he intended to say, upon the delivery of the articles. On his return, it is resolved, “That Mr. Pym have the thanks
“of the House, for his well delivering of the
“charge against the Earl of Strafford.” See the proceedings against Sir G. Ratcliffe, on the 29th and 31st of December, 1640.—He is accused by message, and the articles are delivered at a Conference.

† Archbishop Laud continued a prisoner in the Tower, till he was brought to his trial in March, 1643-4. After the trial was over, no judgment was pronounced, but he was condemned by an *Ordinance*, which passed the Lords, on the 4th of January, 1644-5. It is said, that only six Lords were present at the

passing of this Ordinance.—See Biog. Brit. title, *Laud*; and the Lords Journals of the 4th of January, where the Ordinance is printed at length; and introductory to it, is what was urged at the Conference, on the part of the Commons, to shew, (1.) That what the Archbishop had done was high treason against the realm; and (2.) That though no inferior judge could judge of this, it was reserved, by the 25th Edward III. for the declaration of Parliament.—He was executed on the 10th of January, 1644-5, after a confinement of four years.—Welwood, after describing his faults and infirmities, adds, “He was however certainly, in spite of malice, a man of an elevated capacity and vast designs; a great
“encourager of learning and learned men;
“and spared no pains nor cost to enrich England with such a noble collection of books
“and manuscripts in most languages, as looked rather like the bounty of a king than of
“a subject.” *Memoirs*, p. 52.

‡ This was an impeachment of a Commoner before the Lords “for a capital offence.”—

No.

“Treason,” and other great misdemeanors;—and that a message be forthwith sent to the Lords for that purpose, and that he may be forthwith committed; and that the House will, within some convenient time, resort to their Lordships with particular accusations and articles against him.—The Lords answer, That they had committed him to safe custody *.

9. On

No doubt seems to have been entertained, at that time, of the legality of this proceeding, either by the Lords, or Commons, or by Mr. Selden, Mr. Whitelocke, or Mr. Maynard, who were all at that time Members of the House of Commons.—Mr. Hyde, afterwards Earl of Clarendon, makes the report of the state and nature of the charge against Judge Berkley; and, upon this report, the House of Commons immediately resolve upon the impeachment.—And when Lord Clarendon, in the History of the Rebellion, Vol. II. p. 290, mentions this event, he never suggests a hint, that the Commons, in impeaching a Commoner for a capital offence, were doing, what by law they had no right to do.—Judge Berkley himself (who was a good lawyer) when he is called upon by the Lords, on the 12th of February, and has leave to speak, touching the accusation of treason that had been charged against him by the House of Commons, submits himself to the pleasure of the House.—Whitelocke says, “That Maxwell, the Usher of the Black Rod, came to the King’s Bench, when the Judges were sitting, took Judge Berkley from off the Bench, and carried him away to prison; which struck a great terror in the rest of his brethren then sitting in Westminster Hall, and in all his profession.”—He adds, “that this Judge was a very learned man in our laws, and a good orator and judge; moderate in his ways, except his desires of the court favour.” Whitelocke’s Memoirs, p. 39.—See what is said before upon the subject of the Commons impeaching a Commoner for a capital offence, in p. 54 and 75, 76, of this volume.

* The articles of charge against the six Judges, one of which, against Sir Robert Berkley, was for High Treason, were delivered to the Lords at a Conference, on the 6th of July, 1641.—See in the Lords Journal the speech of Mr. Hollis upon this occasion.—The Judges were, Sir John Brampton, Lord Chief Justice of the King’s Bench—Sir Robert Berkley, one of the Justices of that Court—Sir Francis Crawley, one of the Judges of the Common Pleas—Sir Humphrey Davenport, Lord Chief Baron of the Exchequer—Sir Richard Weston, and Sir Thomas Trevor, Barons of that Court.—Mr. Waller’s speech, who was one of the Managers of this Conference, is printed at the end of his Poems—in which, speaking of the opinion given by Judge Crawley, “That the votes and resolutions of Parliament against Ship-money were void; and that it is not in the power of a Parliament to abolish that judgment.” Mr. Waller concludes, “To him, my Lords, who has thus played with the power of Parliament, we may well apply what was once said to the Goat browsing upon the Vine,

*Rode, caper, vitem; tamen hinc, cum stabis ad aras,
In tua, quod fundi, cornua, possit, erit—*

Mr. Hyde’s conclusion is, “My Lords, if the excellent envied constitution of this kingdom hath been of late distempered, your Lordships see the causes; if the sweet harmony between the King’s protection and the subject’s obedience hath unluckily suffered interruption; if the royal justice and honour of the best of Kings hath been mistaken by his people; if the duty and affection of the most faithful and loyal nation hath been suspected by their gracious sovereign; if, by these misrepresentations

9. On the 4th of August, 1641, the impeachment of several Bishops having been agreed to, Mr. Serjeant Wylde is ordered to carry it up; which he does, and delivers it at the Bar of the House of Lords.—On the 8th of August, the Commons agree to send a message, to desire, That the Bishops which have been impeached by this House, may be sequestered from Parliament—but this message does not appear from the Lords Journals to have been delivered.—The Lords, however, upon the 17th of August, resolve, That such of the Bishops as are impeached, shall not sit in the House when the merits of the cause are in debate; but that, whilst the manner of proceeding in the cause is in debate, the Bishops may sit, but not vote.

10. The Lords having expressed a doubt, at a Conference, Whether the charge against the Bishops was not too general for them to make answer to, recommended it to the Commons to form a particular charge “in writing” upon the verbal charge which they brought.—This matter is referred to a Committee, upon the 11th of August, 1641, and on the 13th Mr. Serjeant Wylde reports a more particular charge; and the House resolve, That this further impeachment shall be delivered at the Bar, “in the same manner as the last was,” and the like prayer made, that they may answer in presence of the Commons.

11. On the 18th of December, 1641, a message is brought to the Lords by Mr. Goodwin, to let their Lordships know, That he was commanded by the Knights, Citizens, and Burgeesses, for the

presentations and these misunderstandings, the King and the people have been robbed of the delight and comfort of each other, and the blessed peace of this Island hath been shaken and frightened into tumults and commotion; into the poverty, though not into the rage of war; as a people prepared for destruction and desolation.—These are the men, that, actively or passively,

by doing or not doing, have brought this upon us—“*Misera servitus, falso pax vocatur—Ubi judicia deficiunt, incipit bellum.*”—These extracts are given here, to induce the curious reader to peruse the whole of these speeches, as inserted, in Rushworth’s Collection, Vol. IV. p. 318, et subf.

Commons now assembled in Parliament, to accuse, and that, in the name of the House of Commons, and of all the Commons of England, he did accuse Daniel O'Neile of "High Treason;" and to desire that their Lordships would commit him to safe custody—and that, in convenient time, the House of Commons will bring up the particular charge against him.—On the 23d of December, the articles against him are agreed to, and ordered to be delivered at a Conference.

12. On the 30th of December, 1641, the Lords having, at a Conference, communicated to the Commons a paper, intitled "The Petition and Protestation of all the Bishops and Prelates called by writ to attend in Parliament, and present about London and Westminster," and signed by twelve of them—the Commons immediately resolve, That these twelve Bishops shall be accused, in the name of the Commons of England, of High Treason, "For endeavouring to subvert the fundamental laws of this kingdom, and the very being of Parliament."—Mr. Glynn is to accuse them at the Bar of the Lords, and to desire, that they may be forthwith sequestered from Parliament, and committed to safe custody.—Mr. Glynn reports, the same day, That he had performed the service commanded him; and that the Lords had sent for the persons accused, and would forthwith commit them to safe custody*.

13. On the 6th of December, 1660, the Lord Falkland brings to the Bar of the House of Lords, a message, impeaching William Drake, of London, Merchant, of sedition, for writing, printing, and publishing a seditious pamphlet, intitled, "The Long Parliament revived."—The Lords immediately order William Drake to be

* See in the Lords Journal of the 30th of December, the form of calling all these Bishops to the Bar, upon their knees, and the proceed-

ings of the House in their commitment.—And see before, in the note p. 134, the account of this Petition and Protestation.

apprehended as a delinquent by their Serjeant at Arms, and to be brought up the next day, to answer the charge.

14. On the 10th of July, 1663, the Earl of Bristol exhibits in the House of Lords, articles of High Treason, and other heinous misdemeanors, against the Lord Chancellor Clarendon, which are read*.—The Lords order a copy of these articles to be delivered to the Judges, for them to consider, “Whether the said charge hath been brought in regularly and legally? And whether it may be proceeded in? And how? And whether there be any treason in it?”—On the 13th of July, the Lord Chief Justice Bridgman delivers the unanimous opinion of the Judges †, “That a charge of High Treason cannot, by the laws and statutes of this realm, be originally exhibited by any one Peer against another, unto the House of Peers; and that therefore this charge hath not been regularly and legally brought in ‡—And if the matters alleged were true, yet, that there is not any treason in them.”—On the

* This Lord Bristol was not the person who had been Ambassador in Spain, but his son, George, much better known by the title of Lord Digby. See his character, very ably drawn by Lord Clarendon, in Vol. III. of Clarendon's State Papers.

† See before, in p. 102, the answer of the Judges, in the year 1626, upon a question put to them by the Lords, on a charge made to the House of Lords, by the King, against the Earl of Bristol, for offences committed whilst he was Ambassador in Spain, and for reflecting upon the Duke of Buckingham; “That they desired to be excused to deliver any opinion of the precedents of Parliamentary proceedings, for that of them the Lords only are the judges.”

‡ Sir M. Hale, mentioning this case, says, “By the statute 1 Hen. IV. Ch. 14. all these kinds of appeals in Parliament are wholly

“taken away: And therefore, when the now Earl of Bristol, prepared articles of High Treason against the Earl of Clarendon, upon a reference to all the Judges, and upon great consideration, the Judges unânime voce returned their opinions, “That those articles were contrary to that statute of the 1 Hen. IV. and could not be preferred in the Lords House by the said Earl, or by any other private person.” But impeachments by the House of Commons of High Treason or other misdemeanors, in the Lords House, have been frequently in practice, notwithstanding the statute of 1 Hen. IV. and are neither within the words nor intent of that statute; for it is a presentment by the most solemn grand inquest of the whole kingdom.” Pl. of the Cr. Vol. II. Ch. 20. p. 150.

14th of July, the Chief Justice, at the request of the Lords, did declare the reasons and grounds which induced the Judges to be of this opinion—Whereupon the Lords concurred with the Judges, in both points, *nemine contradicente* *.

15. When the ingrossed articles of impeachment against the Lord Mordaunt, for illegally imprisoning Mr. Tayleur, are agreed to, on the 22d of December, 1666—a Committee is appointed, of Mr. Prynn, Sir Robert Atkyns, and others, to search the records, and see † what method has been formerly used in impeachments from this House.—On the 29th of December, a message is sent to the Lords, to desire a Conference concerning an impeachment of high crimes and misdemeanors against the Lord Viscount Mordaunt, a Member of the House of Peers.—It appears from the report of this Conference, by Lord Anglesey, on the 3d of January, that Mr. Seymour delivered the articles there.

16. A doubt arose as to the mode of carrying up the charge of treason, and other crimes and misdemeanors, against the Earl of Clarendon.—On the 11th of November, 1667, it is resolved, “That the House carry up the impeachment;” but, on farther consideration ‡, it is ordered the next day, the 12th of November, “That Mr. Edward Seymour do carry it up.” Mr. Seymour, on delivering the impeachment, was also commanded to desire §, “That

* See Lord Clarendon’s own account of this transaction, in the Continuation of his Life, p. 209. And see the reasons and grounds for this opinion of the Judges, as stated in the Lord Chief Justice Bridgman’s speech, in delivering their unanimous opinion in the House of Lords on the 14th of July, 1663. State Trials, Vol. II. p. 552.

† The Report from this Committee does not appear in the Journals.

‡ It is said in the proceedings against Lord Clarendon, in Vol. II. of the State Trials, p. 563, “That it being considered, that if the Speaker go up with the charge, some dispute might arise about carrying the Mace, it was resolved, That Mr. Seymour carry it.”

§ This message was drawn up upon paper, for Mr. Seymour to read and deliver at the Lords Bar; but it is said in a note to Grey’s Debates,

“ That the Earl of Clarendon might be sequestered from Parliament, and forthwith committed to safe custody—and, that the Commons will, within a convenient time, exhibit the articles of the charge against him.”

17. The impeachment against Sir William Penn, for embezzlement of prize goods, is delivered at a Conference, on the 24th of April, 1668.—The articles are reported to the Lords, and read; and Sir William Penn is ordered to appear at their Lordships Bar, on the 27th, to be heard, what he shall have to say thereupon.

18. On the 5th of December, 1678, the impeachment against the Lords, for being concerned in the Popish Plot, was delivered at the Bar of the House of Lords, by message; and that the Commons will in convenient time exhibit articles of charge *.

19. On the 23d of December, 1678, the impeachment against Lord Danby is delivered by message at the Lords Bar by Sir Henry Capell; and the articles are brought up at the same time and presented to the Lords.—They also pray, “ That his Lordship may be

Debates, Vol. I. p. 38, “ That by a mistake, “ instead of the Earl of Clarendon’s impeachment, the Earl of Strafford’s, which lay on “ the table, was put into Mr. Seymour’s “ hands; and he was obliged to trust to his “ memory, when he came to the Lords Bar; “ but that he afterwards delivered a paper of “ the impeachment to the Clerk.”

* The Commons, in delivering this charge, do not pray, that the impeached Lords may be committed; as, some days before, viz. on the 24th of October, after taking several examinations touching this business of the Popish Plot, and receiving informations against the

Lords Arundel, Powys, Bellasyse, Stafford, and Petre, they had ordered Chief Justice Scroggs immediately to come to the House; where, having examined Titus Oates upon oath, he issued twenty-six warrants for apprehending these Lords, together with several other persons; by virtue of which, and by the subsequent orders of the House of Lords, they were on the 5th of December in actual custody; some in the Gatehouse, others in the King’s Bench, and others in the Tower.—See the Lords Journal of the 25th and 26th of October, 1678; and Grey’s Debates, Vol. VI. p. 117.

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“ sequestered from Parliament, and forthwith committed to safe custody.”

20. On the 21st of December, 1680, Sir Gilbert Gerrard carries up to the Lords Bar the articles of impeachment against Mr. Seymour.—They are read;—Mr. Seymour is then called in*; and, having heard the articles, desires a copy of them, which is granted to him; and a day is fixed by the Lords for delivering in his answer.

21. On the 7th of January, 1680, the Lord Cavendish, at the Bar of the Lords, delivers articles of impeachment against Sir William Scroggs, Chief Justice of the Court of King's Bench, for “ High Treason †,” and other high crimes and misdemeanors ‡.

22. On

* The entry in the Lords Journal is, “ The House being acquainted, That Edward Seymour, Esquire, was attending at the door, to receive their Lordships pleasure; he was called in; and, being brought to the Bar, and kneeling, the Lord Chancellor told him, that there are articles of impeachment brought from the House of Commons against him.”

† There was much debate in the House of Commons, Whether the crimes, as charged in the articles, amounted to high treason—and, though the Commons should denominate them “ treason,” whether the Lords would so receive them, and upon that commit him?—But there is not a syllable of doubt, Whether, if they did amount to treason, this proceeding by impeachment against a Commoner for high treason was irregular?—Sir William Jones—Sir Francis Winnington—Serjeant Maynard—Mr. Finch—and Mr. Powle, took great part in these debates.—*Grey's Debates*, Vol. VIII. p. 237. After the examination of the

witnesses, on the 11th of November, 1680, on whose evidence these charges against Sir W. Scroggs were founded, Sir Francis Winnington says, “ Mr. Speaker, the two great pillars of the English Government are Parliaments and Juries—it is this gives us the title of free-born Englishmen. For my notion of free Englishmen is this, That they are ruled by laws of their own making, and tried by men of the same condition with themselves. These two great and undoubted privileges of the people have been lately invaded by the Judges, that now sit in Westminster Hall.” *State Trials*, Vol. VII. p. 481.

‡ Whilst these articles were reading, “ The Lord Chief Justice, being present, stood up in his place:”—but after they are read, and an order is made for his giving security for his appearance, he is brought to the Bar, and kneels—and then the Lord Chancellor acquaints him with this order.—The Lords refuse to put the question for committing

22. On the 26th of March, 1681, Sir Leoline Jenkins, at the Bar of the House of Lords, impeached Edward Fitz Harris of High Treason, in the name of all the Commons of England *.

ting Sir William Scroggs, or for addressing the King to remove him from the execution of his office, till his trial be over.—Lords. Journal, 7th of January.—See the protest upon this occasion.
* See before, note †, p. 119.

IV. *Proceedings in either House between the Delivery of the Charge and the Trial.*

I. **O**N the 28th of May, 1624, the Lords Committees report an order concerning judicature, which the House approve of, and order to be entered in the Journal—It is as follows: “ * The Lords of the High Court of Parliament do hold it fit to consider of some orders for the trials of such persons as shall hereafter be brought before them, and come to judicature: But, the session being soon to end for this time, their Lordships hold it fit to declare now in the general, “ That, as this Court is the highest, from whence others ought to draw their light, so they do intend the proceedings thereof shall be most clear and equal; as well, on the one side, in finding out offences, where there is just ground, as, on the other side, in affording all just means of defence to such as shall be questioned: For the particulars, they do at this time order, “ That in all cases of moment, the defendants shall have copies of all depositions, both *pro* and *contra*, after publication, a convenient time before the hearing, to prepare themselves; and also, that the defendants, if they shall demand it of the House in due time, shall have their learned Counsel to assist them in their defence, whether they be able by reason of health to answer in person or not, so as they chuse Counsel void of just exception; and if such Counsel

* This is the general order referred to by the Lords, on the 15th of May, 1626, in their answer to the King’s message for disallowing Counsel to the Earl of Bristol; and it appears from the Lords Journal, that Charles the Ist, then Prince of Wales, was present in the House of Lords, (as the Lords state) on the

28th of May, 1624, upon the day the order was made.—The consideration of the several points, here mentioned, seems to have arisen from the case of the Lord Treasurer Middlesex, which had just before come before the Lords; and more particularly from his petition presented on the 27th of April, 1624.

shall

shall refuse them, they are to be assigned as the Court shall think fit."—This their Lordships do, because in all cases, as well civil, as criminal and capital, they hold that all lawful helps cannot, before just judges, make one that is guilty avoid justice; and on the other side, (according to his Majesty's most gracious speech) God defend, that an Innocent should be condemned.—And for the calling a Member of this Court to the Bar, their Lordships hold it fit to be very well weighed, at what time, and for what causes, it shall be; and therefore the time being now short, precedents are to be looked out, and this is to be considered of at the next meeting."

2. On the 18th of November, 1640, the Commons send a message to the Lords, to desire that they would appoint a Committee of a very few, who, "in the presence of some of this "House," might take depositions, and examine witnesses, against Lord Strafford; and that the interrogatories, testimonies, and witnesses might be kept private, until the charge be made full and perfect*.

3. Upon the message from the Commons to the Lords, on the 11th of November, 1640, for impeaching Lord Strafford, he is immediately sequestered from sitting in Parliament, and committed to the custody of the Gentleman Usher.—But when the ingrossed articles are brought up, on the 25th of November, he is forthwith committed to the Tower.—He is allowed a copy of the articles, to

* See, in the Lords Journal of the 20th of November, Mr. Pym's speech on delivering this message; and also the proceedings of the Lords on the 20th, 21st, and 23d of November, in considering and agreeing to what was desired by the Commons.—On the 1st of December, the Lords order, "That such of the "House of Commons, as they shall make "choice of, may be present from time to time "at the taking of such preparatory examinations, as shall be desired by them to be "taken, for perfecting the charge against the "Earl of Strafford."—On the 4th of December eight Members are appointed for this purpose.—See also what is desired by the Commons in the case of Sir George Ratcliffe, and agreed to by the Lords on the 29th and 31st of December, 1640.

prepare a speedy answer; and likewise, that he have free access of such Counsel* as the House shall approve of, to advise about his answer; and that the access of friends and servants shall not be debarred him; and such physicians, as he shall think fit for his health, shall have access to him.

4. On the 19th of November, 1640, the Commons had desired that the Lords would make an order, that such of their Lordships as it should be necessary to examine in the business concerning Lord Strafford, might be examined upon oath.—The Lords taking this message into consideration on the 21st, ordered, “That, upon the desire of the House of Commons, and by the consent of the Peers of this High Court of Parliament assembled, for this time, and in this case†, the Peers and Assistants shall be examined upon oath, as witnesses.”

5. On

* Lord Strafford had, on the 19th of November, presented a petition to the Lords, desiring, That he might be bailed, have Counsel assigned him, and a Solicitor, in the modest and just course of his own defence.

† This must relate only to the examinations and depositions, which were taking at this time, in the case of Lord Strafford, before a Committee of Lords, at which a Committee of the House of Commons was also present; and can have no reference to any evidence that was to be given by the Lords upon the trial; which, in this instance, as well as in every other for treason or felony, must have been delivered upon oath.—This application of the Commons, and concession of the Lords, “That for this time, and in this case, the Lords might be examined upon oath,” brought on a re-consideration of the question, In what cases Peers might answer upon honour only?—and produced the following report from the Committee of Privileges, on the 31st of December, 1640: “Our opinions are clear, and that, upon hearing divers learned men of

“both laws speak, that our answers upon honour only can be no impediment to the common justice of the kingdom, but a due and just preservation of our ancient liberties; and therefore we offer it as our unanimous opinions to the House, That our former order may stand in full force, which is entered upon our roll *in hæc verba*:—“Ordered, upon the question, *nemine contradicente*, That the Nobility of this kingdom, and Lords of the Upper House of Parliament, are, of ancient right, to answer, in all courts, as defendants, upon protestation of honour only, and not upon the common oath.—And that the said order, and this explanation, doth extend to all answers and examinations upon *interrogatories*, in all causes as well criminal as civil, and in all courts and commissions whatsoever; and also to the persons of the Widows and Dowagers of the temporal Peers of this Land: And that the Lord Keeper of the Great Seal of England for the time being, or the Speaker of the Lords House for the time being, do forthwith give notice of it, together

5. On the 29th of December, 1640, the Lords resolve, That if any Lord shall be examined as a witness in the case of Lord Strafford, and if it appear, at the time of the judgment, that he is a material witness, and thereupon shall have any scruple or doubt arise in his conscience, that therefore he ought not to sit as a Judge in the same cause, that then, upon his humble motion to the House, he be excused therein*.

6. On the 3d of February, 1640, a day is fixed by the Lords, for the Lord Strafford to put in his answer in writing to the further charge of the House of Commons†.—On the 17th of February he is called upon, at the Bar, to produce his answer, and is permitted by his Counsel to shew why it is not yet ready;—after much debate, another week is allowed him, when he is peremptorily to answer, and is then to attend in person; and this is communicated to the Commons at a Free Conference on the 18th.—Upon the report of this Conference in the House of Commons on the 18th,

“ together with this explanation, to all the
“ Courts of Justice, and the Judges, Clerks,
“ and Registers of them, by causing our for-
“ mer order, with this explanation, to be re-
“ corded in all courts; and that all orders,
“ constitutions, or customs, entered or prac-
“ tised to the contrary, whatsoever, may be
“ abolished and declared void; and the Lord
“ Keeper of the Great Seal for the time being,
“ or Commissioners of the Great Seal, out of
“ Parliament time, shall see all practice to the
“ contrary, hereafter, to be punished with
“ exemplary severity, to deter others from the
“ like attempts.”—And being put to the ques-
“ tion, Whether this shall be entered as an order
“ of the House? it was consented to, *nemine*
contradicente.—See the Lords Journal, 31st of
December, 1640.—Blackstone says, Vol. I.
page 402, “ A Peer sitting in judgment gives
“ not his verdict upon oath, but upon his

“ honour; he answers also to bills in chancery
upon his honour, and not upon his oath;
but, when he is examined, as a witness,
either in civil or criminal cases, he must be
sworn: for the respect, which the law shews
to the honour of a Peer, does not extend so
far as to overturn a settled maxim, that *in*
judicio non creditur nisi juratis.”

* This was at the suggestion of the Earl of Bristol, who, having been sworn as a witness, to be examined in the cause of Lord Strafford, desired their Lordships to take it into consideration, whether any Lord, that hath been examined as a witness, ought to be a Judge in the same cause.

† This order was made after a debate, Whether he should answer in writing, or verbally, guilty or not guilty—and after this matter had been re-considered in a Committee of the whole House.

they immediately appoint a Committee to take it into consideration, and also what concerns the rights of the Commons, in the proceedings in the Lords House against Lord Strafford; and what concerns the kingdom in general in the legality of those proceedings; and they are likewise to consider, what is fit for the Commons to claim in cases of impeachment.—On the 22d of February, Mr. Glynn makes the report from this Committee*.—Another Conference is held on the 23d, when the Lords acquaint the Commons, in reply to what they had desired of the Lords on the preceding day, “That they shall admit Lord Strafford no further use of Counsel than the necessity of the cause for his just defence requireth, and wherein Counsel may, with the justice and honour of this House, be afforded him; and there shall be no delay in the proceeding, but all convenient expedition used, according to the desire of the Commons.”

7. When the Earl of Strafford delivers in his answer, at the Bar of the House of Lords, to the articles of impeachment, on the 24th of February, 1640†; a question arose, Whether the Bishops should be present at the reading of it, it being in *agitazione causæ Sanguinis*—and the Lords the Bishops said they would withdraw; accord-

* This report is not entered in the Journal, nor in Rushworth, or the Parliamentary History; but it appears, from the Lords Journal of the 22d of February, to have related to the indulgence shewn by the Lords to Lord Strafford, in allowing him further time, and to the permitting him to be heard by his Counsel to this point.

† At the sitting of the House of Lords, upon this day, the 24th of February, Charles the 1st came unexpectedly to the House, being without his robes; and declared unto the House, that the cause of his coming now, was to hear the charges against the Earl of Strafford, and his answers, for his own particular information.—The Lords sitting silent; the

Lord Keeper standing behind, on his Majesty's right-hand, by command from the King, called for the Earl of Strafford to be brought to the Bar; and commanded the charge to be read against him, one article after another, by the Clerk of the Parliament; and the Earl of Strafford's answer to every article, by his Counsel.—After the King was gone, the Lords commanded the Lord Keeper to resume the House.—And then the Lords, “taking all that was done in the King's presence to be no act of the House,” ordered the Earl of Strafford to be brought to the Bar; and demanded of him his answer in writing, according as he was enjoined by order of the House.—Lords Journal.

ingly, as soon as Lord Strafford came in, the Lords the Bishops went out.—Lord Strafford's answer is communicated to the Commons at a Conference on the 25th of February.—On the 26th, it is referred by the Commons to the Committee who had been appointed to draw up the charge; and they are directed to proceed in the secretest and speediest way they can, for the advantage of the business.—On the 6th of March, Mr. Whitelocke reports from that Committee, "That there shall be no replication put in to this answer in writing; but that a message be sent to the Lords to acquaint them, That the Commons have considered of the Earl of Strafford's answer, and do aver their charge of High Treason against him—And that he is guilty in such manner and form as he stands accused and impeached—And that the House will be ready to prove their charge against him, at such convenient time as their Lordships shall prefix—And intend to manage the evidence by Members of their own *."

8. On the 22d of February, 1640, it was moved in the House of Lords, That the House would consider, whether it be fit that those Members of this House, that voted in the House of Commons in the accusation of High Treason against the Earl of Strafford, should be Judges in this House against him for the same cause—This is to be debated the next day.—But the Lord Rich, Lord Howard, and the Lord Keeper, immediately desired the House, that they, having voted in the House of Commons against him, might be excused from being Judges †.

9. On

* This appears to have been at one time matter of doubt; whether the impeachment on the part of the Commons should be managed by their own Members, or by Counsel—as, upon the 27th of February, there is the following entry in the Journal:—"Upon Mr. Whitelocke's report from the Committee for the Earl of Strafford, the House does

" declare, that they are very well satisfied, " that the evidence to be produced against the " Earl of Strafford, at his trial, be managed " by Members."

† On the 20th of March, the Lords report from a Committee (appointed on the 19th to consider of this point) that they were of opinion, " That those that voted in the House of

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9. On the 26th of February, 1640, the Committee who were appointed to draw up the charge against the Earl of Strafford, are to consider of the articles, and his answers; and they are likewise to consider of the proofs; and how the witnesses may be conveniently brought together, to give their testimony *vivâ voce*; and they are to proceed in the secretest and speediest way they can, for the advantage of the business, in preparing it for a trial;—and they have power to send for persons, papers, and records, or any thing else that they shall, in their judgment, conceive fit, or that may conduce to the service.

10. When the articles of impeachment for misdemeanors against Dr. Cofins, and several others, are delivered to the Lords, on the 16th of March, 1640, and read—all the parties are immediately ordered to be brought up by the Gentleman Usher; and to appear on the 18th.—On the 18th, being in custody, they are ordered to give bail * for their abiding the judgment of Parliament.—On the 14th of May, 1641, Dr. Cofins, and the rest, are called in, and hear the impeachment read.—On the 4th of June, a message is sent to the Commons to acquaint them, That the answers from most of the persons impeached are brought in.—On the 5th, the

“ Commons in the Earl of Strafford’s case,
 “ and since are Peers, may vote as Judges
 “ here, in this House, in the same cause.”—I
 do not find, that the Lords confirmed this report from the Committee.—Lord Clarendon says, “ The example of the Bishops, excusing
 “ themselves from attending, prevailed with
 “ some Lords, who had been created since
 “ the accusation, to quit their right of judging; and, amongst them, the Lord Littleton (who had been made a Baron upon the
 “ desire of the Earl of Strafford, for that only
 “ reason, that he professed, ‘ If he were a
 “ Peer he would, and indeed he could, do him

“ notable service ’) was the first who quitted
 “ his right to judge, because he had been a
 “ Commoner when the accusation was brought
 “ up: but they who insisted upon their right,
 “ (as the Lord Seymour and others) and demanded the judgment of the House, were
 “ no more disturbed, but exercised the same
 “ power to the end, as any of the other
 “ Lords did.” History of the Rebellion, Vol. I. p. 171. Book the 3d.

* See, on the 20th and 30th of March, and 6th of April, 1641, the nature of the security they gave.

Lords order, That Dr. Cofins shall bring in the pardon, which he mentions in his answer.

11. On the 6th of March, 1640, the Commons desire a Conference with the Lords, to consider of some propositions and circumstances concerning Lord Strafford's trial.—This Conference was held on the 8th; and the subject of it was, to desire the Lords to appoint a convenient place for the Commons and the Managers; and that there may be room for both Houses, that thereby the Members of the House of Commons may inform their consciences, for giving their votes, when they demand judgment *;—and also, to signify, that the House of Commons, having intimated that they should manage the evidence by Members of their own, do not expect that any counsel be allowed to the Earl of Strafford, at the giving of evidence upon the trial.—The Lords, in answer to this, upon the 9th and 11th of March, desire the Commons to shew precedents,

* Though this is the only reason alleged by the House of Commons, for desiring to be present in a body, Lord Clarendon suggests, that there was another, much more important; "That the Commons then foresaw, that they might be put to 'another kind of proceeding' than that they pretended; and they therefore (though with much ado) consented to sit uncovered, lest such a little circumstance might disturb the whole design."—History of the Rebellion, Vol. I. p. 170.—The 'other kind of proceeding,' alluded to by Lord Clarendon, was a Bill of Attainder; and the truth of his suspicions is very much confirmed by what the Commons say, in a Conference that was held upon the 15th of April, 1641: "Another thing that came into our consideration is, the way of proceeding hitherto had; and whether the proceeding in a Judgment, or upon a Bill, might most conveniently and properly be taken; for if it be to demand Judgment of your Lord-

ships, no man can say against what hath been done—but, if it be by way of Bill, there must be a guilt, a fact, before there can be a just attainder; a fact must appear before there can be a just judgment;—it must appear to them that concur in the Bill; that is, to both Houses, your Lordships and the House of Commons—And that course hath been taken, that the evidence hath been given in effect in presence of both Houses; so that the proceedings by way of Bill, or by way of Judgment, do not oppose that which your Lordships, and the House of Commons have done."—See the Lords Journal, the 15th of April, 1641.—Mr. Maynard, in a report of what was intended to be offered to the Lords at this Conference, says, "The evidence of fact being given, it was in proposition from the beginning to go by way of Bill."—Commons Journal, 15th of April.

" where

“ where the place hath been changed ; for that locally the judicature hath been in the House of Lords.”—And with respect to counsel, the Lords order, “ That in matters of mere fact, Lord Strafford shall not make use of his counsel ; but in matters of law, he shall be allowed counsel—And if any doubt arise, What is, or is not matter of fact, the Lords will reserve the judgment of this to themselves *.”—In answer to this, the Commons, at the next Free Conference, which is held on the 13th of March, insist, (1.) “ That, the Parliament being summoned to appear at the King’s Palace at Westminster, if one room be not convenient, another may be desired that shall be more convenient.” (2.) “ That Lord Strafford being impeached by them, the Commons may of right come as a House, if they please ; but, for some special reasons, they are resolved to send their own Members, as a Committee of the whole House, authorized by the House to be present at the trial, to hear, and some particular persons of themselves to manage, the evidence.” (3). By the word “ managing the evidence, they mean, the ordering, applying, and enforcing the evidence, according to the truth of the fact.” (4.) “ With respect to counsel, they say, That, by the law and course of Parliaments, no counsel is to be allowed Lord Strafford until the evidence be fully concluded upon both parts, upon all the several articles ; and if at any time, during the evidence, the counsel shall interpose, the Members of the House of Commons must of necessity desist, because it will not become them to plead against counsel †.”

12. On

* See in the Lords Journal of the 9th of March, and in the Commons Journal of the 11th, a more particular account of what the Lords answered to these requests of the Commons, touching, (1.) The Place—(2.) The Persons—(3.) Managing of the Evidence—(4.) Use of Counsel.

† In consequence of this last Conference, the Lords, upon the 13th of March, appoint the trial to be in Westminster Hall ; and agree that the Commons may be present as a Committee, for this time ; but that this shall not be drawn into a precedent.—See the Commons Journal of the 15th and 16th of March ;—on

12. On the 15th of March, 1640, the Lords appoint a Committee to consider of a Lord Steward; and to prepare all things requisite against the day of trial of Lord Strafford*.—And, on the 19th, another Committee is appointed, to consider whether the Bishops, and Lords Temporal, may give their proxies in cases of blood—And also, whether those who voted in the accusation against Lord Strafford, and are since Members of the Lords, may sit as Judges †.

13. On the 18th of March, 1640, it is ordered by the Commons, That if any of the witnesses in the Lord Strafford's cause have, or shall depart the town, having been required to stay, before such time as the Committee appointed to conduct the business be acquainted therewith, such person shall be adjudged to offer a great contempt to this House, and shall be forthwith sent for as a delinquent.

the last of which days they resolve, "That of
"right they may come as a House, if they
"please, the Earl of Strafford having been
"impeached by them; but for some special
"reasons upon this occasion, they are resolved
"to send their own Members, as a Committee
"of the whole House authorized by the
"House, to be present at the trial, to hear,
"and some particular persons of themselves to
"manage the evidence.—And that, with
"respect to the matter of allowing Counsel,
"and their Lordships reservation to their
"judgment, what is matter of fact and what
"not; the House of Commons do save to
"themselves, as they have formerly done, all
"rights that do pertain to them, according to
"law, and 'the course of Parliaments.'"—
This protestation and saving is carried up by
Mr. Whitelocke on the 20th of March.

* See, in the Lords Journal of the 19th of March, and the Commons Journal of the 20th, the rules and orders prescribed by each House, to be observed at the trial.

† See before, N^o 8, the proceedings on the 22d of February, 1640; and see the Lords Journal of the 20th of March, where a Committee, appointed the preceding day, report their opinion, (1.) That the Lords shall not make use of proxies; (2.) That the Lords who voted in the House of Commons, and since are Peers, may vote as Judges; (3.) And, that the Bishops should shew reasons why they should not likewise forbear giving their proxies in this case.—To the first and third of these resolutions the House agree; but do not appear to have given any opinion upon the second point reported from their Committee. And the Lords, the Bishops, did declare, That in this case, saving their rights, they will not make any procurator for themselves.—Lord Clarendon, in Vol. I. of the History of the Rebellion, p. 170, and 171, relates several anecdotes respecting these two points, of the Bishops and Peers lately made, voting in this question.

14. On the 19th of March, 1640, the Lords resolve, *namine contradicente*, “ That the Lord Steward of his Majesty’s household, “ (appointed during this Parliament) shall be Steward for the trial “ of the Earl of Strafford only *.”

15. On the 20th of March, 1640, Lord Strafford having, by petition, desired to examine some Members of the House of Commons as witnesses upon his trial; the House of Commons leave those Members named in the petition to do therein as they shall please, without thereby giving any offence to the House.

16. On the 20th of March, 1640, the Commons arrange the manner in which the Committee of the House shall sit in Westminster Hall, without intermixture of any others, in the place prepared for them; and that, in respect of the inconveniency of it, the Members shall not come to meet at the House, but come directly to the place of trial †—Mr. Speaker is to be present in some private place, and as a particular Member of the House; but no order is to be made upon this.

17. On the 22d of March, 1640, the Commons resolve, That in case the Earl of Strafford shall ask leave, or shall have liberty given him to speak any thing by way of defence, before such time as the Members, that are appointed to manage the evidence, shall enter into the managing of their evidence, that then they

* This Lord High Steward was the Earl of Arundel.—See his character very well drawn by Lord Clarendon, in History of the Rebellion, Vol. I. p. 44. He adds, p. 171, “ That he was made choice of by the Lords “ for this office (in the absence of the Lord “ Keeper, who was very sick) being a person “ notoriously disaffected to the Earl of Strafford.”—Rushworth has given a particular account of the ceremonies at the trial; and of the places where the King, Queen, and Prince

of Wales sat. Vol. VIII. p. 41; and in the preface to that volume.

† On the 30th of March, 1641, and 31st, and on the 2d of April, there is an order for the House to meet the next day, at Westminster Hall, as a Committee, and so during the trial; and, on the 8th of April, the House are to meet the next morning, at eight o’clock, as a Committee, in Westminster Hall; and in the House at two o’clock.

shall interpose; and if so be, that notwithstanding such interposition the Lords shall give him leave to speak, that then they shall forbear to proceed further in the managing of their evidence, until they have repaired unto the House, and received further order from them.

18. On the 23d of March, 1640, the Lords resolve, (1.) That Lord Strafford be not admitted to speak at his trial, before the House of Commons have fully managed their evidence against him: (2.) If a witness gives evidence for the Commons; after the evidence, Lord Strafford may ask him questions: (3.) If Lord Strafford except against a witness, he is to be heard, before the witness gives in his evidence.

19. On the 25th of March, 1641, the Committee appointed to manage the evidence at Lord Strafford's trial, have liberty to proceed upon such articles, as they shall think most important for the speediest expediting of the trial; and to contract, and to proceed, in such manner as they shall think most expedient.

20. On the 2d of April, 1641, Mr. Pym went to the Lords, to desire that such of their Lordships, as this House shall have occasion to make use of at the trial of Lord Strafford, would be pleased to be present at the said trial—and by name, the Lord Treasurer, &c *.—Mr. Pym likewise nominated some Members
of

* The Lords, answer "That the other Lords named should be present constantly; but they desired that the Lord Treasurer might have notice upon what day he is to be present; in regard he sits not upon the trial, being a Bishop." This Lord Treasurer was Luxon. Bishop of London: "a man so unknown," says Lord Clarendon, "that his name was scarce heard of in the king-

dom; he had been, within two years before, but a private chaplain to the King, and the president of a poor college in Oxford.—But Archbishop Laud was infinitely pleased with what he had done; and unhappily believed, he had provided a stronger support for the church." History of the Rebellion, Vol. I. p. 76—See in his life in the Biographia Britannica, an account of his conduct from this
time

of the House of Commons; viz. Mr. Treasurer, Sir W. Pennyman, &c.—A note of these names was given to the Serjeant; and he was ordered to give notice to the Members, to be there present, upon all occasions.

21. On the 28th of June, 1641, a message is brought from the Commons to the Lords, to acquaint them, that they formerly* brought up an impeachment of High Treason against the Archbishop of Canterbury, which hath lain asleep ever since; but that now, intending to proceed, and examine witnesses, the Commons desire their Lordships, that a Select Committee may be appointed, to examine such witnesses as the House of Commons shall desire, and that to be in the presence of some Members of the House of Commons.—The Lords appoint the same Committee of Lords to take the examination of witnesses upon oath in this cause, as were appointed in the cause of Lord Strafford.—Mr. Attorney General, and Mr. Serjeant Glanville, to write down the examinations †.

time to the King's death, when he attended his Majesty on the scaffold, with the conversation that passed between them there.—After the Restoration, he was translated, to be Archbishop of Canterbury. Whitlocke gives the following character of him,—“ Whilst he resided on his living at Somerton in Oxfordshire, he was much delighted with hunting, and kept a pack of good hounds; and had them so well ordered and hunted, chiefly by his own skill and direction, that they exceeded all other hounds in England, for the pleasure and orderly hunting of them. He was a person of great parts and temper, and had as much command of himself, as of his hounds; he was full of ingenuity and meekness, not apt to give offence to any, and willing to do good to all.”

Whitlocke's Memoirs, p. 23.

* See before, p. 128.

† Neither of these were at this time Mem-

bers of the House of Commons, but assistants to the House of Lords.—The further proceedings against Archbishop Laud, being all subsequent to the 4th of January, 1641, and some of them deferred so late as into the year 1644, do not fall within the compass of this work—being in times, from whence no precedents ought to be drawn, to justify the proceedings of either House of Parliament.—The curious reader will find them in the Journals of that period; and in the State Trials, Vol. I. p. 803, said there, to be written by the Archbishop during his imprisonment in the Tower.—See particularly in page 817, the Archbishop's account of the mode in which his trial was conducted. He was afterwards condemned by an ordinance, and executed on the 10th of January 1644–5. See before Note †, page 149.

Proceedings between the Charge and the Trial. 171

22. On the 11th of August, 1641, the Lords, at a Conference, offer to the consideration of the Commons, Whether the charge brought up by them against the thirteen Bishops (which is inserted in the Commons Journal of the 4th of August) is not too general for the Bishops to make answer to, or for the Lords to ground a judgment upon?—and if it be so, then, whether the Commons would not form a particular charge in writing against the said Bishops, upon the verbal charge which they have brought? or, that the King's Attorney should draw up a particular charge, to which the Bishops might make a particular answer, and the Lords proceed to judgment thereupon?—On the 13th of August, the Commons deliver a more specific charge.

23. The Lords resolve, upon the 17th of August, 1641, That such of the Bishops that are impeached may sit in the House, without voting, when it is in debate, Whether they shall have farther time to answer or not? but that they shall not sit in the House whilst the merits of the cause are in debate; and that, whilst the manner of proceeding in the cause is in debate, the Bishops may sit, but not vote *.

24. On the 23d of October, 1641, the Lords assign counsel to the impeached Bishops—and on the 26th of October, the Commons demand a Conference with the Lords, concerning the sequestering the thirteen Bishops, accused by the Commons, from their votes in Parliament †.—On the 12th of November, twelve

* The Lords, upon the 17th of August, give leave to three of the impeached Bishops to go into their dioceses.

† This Conference is reported in the Lords Journal of the 28th of October, with the reasons of the Commons, as stated by Mr. Pym, why these thirteen Bishops should be ex-

cluded from their votes in Parliament;—See also what reasons were urged, at the same Conference, by Mr. Solicitor General St. John, for suspending *all* the Bishops from voting on a Bill that was depending “for disabling all “ persons in holy orders to exercise any jurisdiction or authority temporal.”

of the Bishops deliver in their answer, consisting of a plea and demurrer.—The Bishop of Gloucester pleads, Not guilty.—This is sent to the Commons; who resolve, “That this plea and demurrer of the Bishops is dilatory and insufficient;” and that they have made no answer; and that they may be required to put in a peremptory answer, such as they will stand to.—On the 6th of December, the Commons desire, notwithstanding this plea and demurrer, to be admitted to their proofs, and that the Bishops may be brought to judgment.—The report of what had passed at this Conference is made to the Lords by the Archbishop of York, on the 7th of December.—On the 11th of December, the Bishops adhere to this mode of proceeding; which is communicated to the Commons on the 13th*.

25. On the 23d of October, 1641, the Lords send word, That they intend to proceed against Judge Berkley on a particular day, that the House might be ready.—On the 26th of October, he is brought to the Bar of the House of Lords, as a delinquent, where the impeachment against him for “High Treason” is read.—He pleads, Not guilty†.—Counsel are assigned him in point of law, which may happen upon matter of treason, and in point of law and fact, which may happen in matter of misdemeanor‡.

26. On

* I find no further proceeding on this subject in the Journals of either House.—The Bishops were advised, within a few days after, to present a petition and protestation to the King, stating the menaces and affronts which they had received in their attendance on Parliament, so that they no longer dared to sit and vote in the House of Lords; and “therefore protesting against all laws, votes, orders, resolutions, and determinations which had been passed since the 27th of December, 1641, as null and void, and of no effect.”—The King communicated this petition to the House of Lords, on the 30th of December;

and the proceedings upon it will appear in the further part of this title.—See also the anecdote related before, in the note, p. 134, from the Life of Archbishop Williams, who was the adviser of this petition and protestation.

† See what is said upon this impeachment, p. 149 of this volume, N° 8. In Judge Berkley’s petition, which is presented to the Lords on the 26th of October, he desires the House will admit him to have Counsel, in point of law, upon the matter of High Treason, of which he is impeached.

‡ There were some further proceedings in this matter in the course of the following summer,

26. On the 4th of December, 1641, the House come to several resolutions against Daniel O'Neile.—On the 6th, they resolve, He shall be accused of High Treason *; and on the 17th of December, the House is of opinion to proceed by way of accusation and impeachment.—On the 18th, the articles are read and voted, and ingrossed.—He is impeached the same day at the Bar of the House of Lords; and immediately committed, at the request of the Commons.

27. On the 31st of December, 1641, a Committee is appointed to consider of the impeachment of the Bishops, who had signed the petition and protestation, and how the House shall best proceed, to bring them to a speedy trial †.—On the 3d of January, the Lords allow them Counsel, to advise them in their defence.—The proceedings went on into the next year.

28. On the 6th of December, 1660, when the articles of impeachment against W. Drake, for publishing a seditious pamphlet,

mer, but, being subsequent to the 4th of January, 1641, and containing nothing very special, they are not entered in this work. Lord Clarendon says, “The judicature of the House of Peers (though their number was but ten, for there were no more at the sentence of Judge Berkley) had helped them all they could. Judge Berkley, who had been committed to the Tower, shortly after the beginning of the Parliament on a charge of High Treason, and, since the beginning of the war, permitted to sit as sole Judge in the King's Bench one whole term, was now (the latter end of the year 1643) brought to judgment; and by their Lordships fined the sum of 20,000*l.* and made incapable of any place of judicature.” *Hist. of the Rebel. Vol. II. p. 290.*

* Here is another instance of a Commoner impeached at the Bar of the House of Lords

of High Treason.—The articles are not ordered to be carried up, till the 26th of March, 1642.

† See what is said before, in the notes, p. 134 and 172.—This petition and protestation is entered in the Journals of both Houses of the 30th of December.—Amongst other things, they protest, “against all laws, orders, votes, resolutions, and determinations, as in themselves null and of none effect, which in their absence, since the 27th December, 1641, have already passed in the House of Lords, during the time of this their forced and violent absence from the said House.”—They are impeached, “For endeavouring to subvert the fundamental laws of this kingdom, and the very being of Parliament, by preferring this petition, and making the protestation expressed in the petition.”

intituled, “The Long Parliament revived,” are read*; the Lords immediately order the said W. Drake to be apprehended as a delinquent by the Serjeant at Arms; and to be brought before the Lords in Parliament to answer his charge.—On the 12th of December, Drake is accordingly brought as a delinquent to the Bar, when the articles are read; to which he answers, “That he
 “confesses he did write and publish the book; but had no intention
 “of sedition—That he is sorry, and submits himself to their Lord-
 “ships mercy.”—On the 19th of December, the Lords taking this again into consideration, resolve, “That, as they apprehend they
 “may not have time, before the dissolution of the Parliament, to
 “proceed in judicature against him, the King’s Attorney General
 “do, in his Majesty’s name, proceed against the said W. Drake, in
 “the Court of King’s Bench, upon the said offence, according to
 “the ordinary course of law †.”

29. On the 3d of January, 1666, when the articles of impeachment against the Lord Mordaunt, for illegally and arbitrarily imprisoning Mr. Tayleur, are read in the House of Lords—the Lords appoint a Committee to search for precedents, and what proceedings have been had in cases of the like nature; and, at the Lord Mordaunt’s request, direct, that he shall have a copy of the articles; and appoint a day for him to offer to the House what he shall have to say concerning the said impeachment.—On the 10th of January, the Committee report ‡ four precedents of impeachments from
 the

* See these articles in the Lords Journal of the 6th of December.

† See before, note *, 135.—What further steps were taken in this matter does not appear; probably no prosecution whatever was had; because, on the 31st of May, and 6th of June, 1661, the Lords themselves so far countenanced the doctrine contained in Drake’s book, as to put a question to the Judges, “Whether the Parliament, begun on the 3d

“of November, 1640, is now determined?” and, though the Judges give an unanimous opinion in the affirmative, the Lords still think proper to order the Attorney General to prepare a declaratory Bill upon this subject. I do not find any progress made in this Bill (the third upon this subject) it certainly did not pass.

‡ This report is as follows:

The 1st precedent, (1.) is the case of the
 Lord

the House of Commons, of Peers, for misdemeanors.—On the 17th of January, the Lord Mordaunt puts in his answer *, which is com-

Lord Latimer, in the Roll 50 Edward III. N° 21.—See this before, p. 51 in this volume.

(2.) “The second is in the 25th of Henry “VIII. where the Bishop of London was “impeached by the House of Commons, for “imprisoning Thomas Phillips, for suspicion “of heresy.”

The Journals of the House of Commons of this period, the year 1533, are not existing; but the entries in the Journal of the Lords, in the 1st vol. p. 65, of the proceedings between the two Houses on this subject, are curious, and worth transcribing:

“Septimo die Februarii, 1533.—Hodie, a Domo Communi allatæ sunt quatuor Billæ—Quarum tertia in papyro scripta, concernit querimoniam Thomæ Phillips (qui diutino tempore in prifona conclusus est, ut de heresi suspectus) adversus Johannem London. Episcopum—Et quarta, comprehendit articulos, cum objectionum prefato Thomæ Phillips utilitatum, quam responfionum per ipsum Thomam facta.

“Nono die Februarii.—Hæc Billæ in papyro scripta, a Domo Communi transmissa, concernens querimoniam Thomæ Phillips, adversus Johannem London. Episcopum, cum dicta Billæ articulorum, *junctæ sunt* illatæ, qui us auditis, memorati Domini exegitabant, ut non ad hunc illustrem Senatū, sive Consiliū, pertinet de talibus frivolis rebus consultare; ideo decretum fuit ut redactæ fuerint ad Domum inferiorem.

“Secundo die Martii.—Hodie, Episcopus London. memoratis Dominis intumabat, die superiøre se (quibusdam a Domo Communi destinatis illum requirētibz, ut statim in scriptis talibus rebus responderit, quas quidam Thomas Phillips, in turre Londoniensī per ipsum Episcopum detentus, adversus eum inculpabat) dixisse, ut querela prefati Thomæ Phillips, a Domo communi in scriptis ad superiorem allata fuit; quæ excogitata fuit res fri-

volis in eo loco consultanda, adeo remissa fuit ad Domum inferiorem; et in ea re nihil egerit, donec opinio prefatorum Dominorum cognosceretur.—Quibus verbis auditis, omnes Proceres, tam Spirituales quam Temporales, una voce dicebant, quod non consentaneum fuit aliquem Procerum predictorum alicui in eo loco responfurum.”

(3.) “The third case, was the impeachment of the House of Commons, the 20th of “July, 1641, against Matthew Bishop of Ely, “concerning whom there was no further proceedings upon this impeachment.”—See before, p. 129 of this Volume, N° 12.

(4.) “The fourth was the impeachment of “John Earl of Bridgewater, by the House of “Commons, the 30th of August, 1641, upon “the complaint of Sir John Corbet; upon “which impeachment there was no proceeding to judgment.”—See, in the Commons Journal of the 4th of June, 1641, the report of Sir John Corbet’s case; and on that day, and the 29th of July, and 25th and 29th of August, the proceedings which the Lords here call an impeachment.

* The Lords had, on the 10th of January, upon the report from the Committee appointed to search for precedents, allowed the Lord Mordaunt till this day, the 17th of January, for putting in his answer—But on the 16th, the Commons send a message to their Lordships, to put them in mind of the business of this impeachment: when the Lords, on the 17th of January, appoint a Committee to consider in what manner Lord Mordaunt’s answer shall be communicated to the Commons, they at the same time direct the Committee also to consider, how to acquaint the House of Commons of their unseasonable message yesterday, in putting them in mind of the Lord Mordaunt’s business, when the Lords had appointed this day for that purpose.

communicated

municated by message to the Commons on the 18th*.—On the 21st of January, the Commons desire the Lords to appoint a day for proceeding on the impeachment.—The Lords immediately appoint the day; and, at the Lord Mordaunt's request, assign him counsel, with an order for witnesses.—Some of these witnesses being Members of the House of Commons, the Lords acquaint the Commons with this, by message, on the 22d, "that the Commons may give directions for their attendance at the hearing." The Commons immediately give leave for the Members named to attend, and at the same time order Mr. Seymour to deliver to the Lords the names of such witnesses as are to be examined to make out the impeachment; and that the Lords be desired to make forth a summons for their attendance at the hearing; which the Lords immediately comply with.—The Commons, on the 22d, appoint the persons who are to manage the evidence, at the hearing upon these articles.

30. On the 12th of November, 1667, a message is brought up by Mr. Seymour to the Bar of the House of Lords, impeaching the Earl of Clarendon of treason, and other high crimes and misdemeanors, and desiring he may be sequestered from Parliament, and committed forthwith to safe custody.—The Lords debate this matter on the 12th and 13th of November; and on the 14th resolve, "That the Commons be informed, that the Lords have not complied with the desires of the House of Commons concerning Lord Clarendon's commitment, and sequestering from Parliament, because the House of Commons have only accused him of treason in general, and have not assigned or specified any particular treason:" And the Lords desire a Conference on this subject†.—The Commons

* It does not appear from the Journals that the Commons made any replication to this answer.

† This Conference is held on the 15th of November, and, on being reported to the

Commons, occasions a debate on that day, and the 16th.—The substance of this debate is to be found in the proceedings against Lord Clarendon, in Vol. II. of the State Trials, p. 564—and in Grey's Debates, Vol. I. p. 41.

agree to this Conference, and on the 16th of November appoint a Committee to draw up reasons for the Commons proceedings *.—These reasons are reported in the House of Lords on the 19th of November.—On the 20th, after reading precedents and much debate, the Lords resolve †, “That they are not satisfied to comply “with the desire of the Commons;” and they desire a Conference with the Commons upon the subject-matter of the last Conference ‡.—On the 23d of November, the Commons agree to this Conference.—But before this message can be delivered to the Lords, the Lords, on the 25th of November, send a message to the Commons, by two of the Judges §, to acquaint them, “That upon the precedents and reasons of the House of Commons, and the whole debate thereupon, the Lords are not satisfied to comply with the “desires of the Commons, for sequestering and committing the Earl “of Clarendon, without any particular treason assigned or speci-

* These reasons are entered in the Commons Journal of the 18th of November;—They declare, “That what can or ought to be done, “by either House of Parliament, is best “known by the custom and proceeding of “Parliament in former times; and that it “doth appear, by example, that, by the “course and practice of Parliament, the “Lords have committed such persons, as “have been generally charged for high treason, though the particular treason hath not “been specified—that great danger might “arise from the escape of the party, or his accomplices, and other inconveniences, if the “special treason was alleged;” and they conclude by urging,

“That the proceedings of inferior courts, “between the King and the subject, or between subject and subject, and the discretion “of Judges in such courts, are bounded and “limited by the discretion of the Parliament “which trusts them; but the discretion of “the Parliament is and ought to be uncon-

“fined, for the safety and preservation of the “whole, which is itself; and it may therefore “do, for preservation of itself, whatsoever is “not repugnant to natural justice.”

† See, in the Lords Journal of the 20th of November, the protest of several Lords against this resolution, with their reasons for dissenting.

‡ This message from the Lords brought on a dispute between the two Houses; the House of Commons alleging, “That the Lords “should, in this instance, have asked a Free “Conference.”—The proceedings between the Houses on the subject of this dispute, are referred to before in this Volume, p. 36, and are inserted in the Appendix, N° 6.

§ The Judges going to the House of Commons to deliver this message, are met by the Messengers of the Commons coming to agree to the Conference, and are by them directed to return to the Lords, without delivering their message; which is afterwards communicated to the Commons at the Conference.

“fied.”—On the 26th of November, the Commons demand a Free Conference, to which the Lords agree *; and which is held on the 28th †.—The Lords adhere to their first resolution ‡; and, on the 3d of December, they receive from the Earl of Clarendon a petition and address, in which, after stating his justification, he acquaints their Lordships that he has withdrawn himself from so powerful a prosecution.—The Commons adhere on their part; and, on the 5th of December, resolve, (1.) “That when any subject shall be impeached of High Treason, generally, by the House of Commons, before the Lords in Parliament, and desired to be forthwith secured, such person impeached ought, for the safety of the King and kingdom, to be accordingly secured.”—And (2.) “That when such impeached person shall be secured, the Lords may limit a convenient time to bring his particular charge before them, for the avoiding delay in justice.”

31. On the 16th of April, 1668, a Committee is appointed to draw up an impeachment against Sir William Penn, for embezzlement of prize goods; and they are to search into precedents in relation to the suspension of Members from sitting whilst they are under impeachment §.—On the 21st of April, the articles are

* Not however without referring it to their Committee of Privileges, to consider precedents, and how a Free Conference may be granted without prejudice to the privileges of the House.—The Earl of Denbigh, on the 27th of November, reports the precedents, and that the Members of the Committee were equally divided; so refer it to the determination of the House.

† See the report of this Conference in the Lords Journal of the 29th of November; and, as it is an important subject, it is inserted in the Appendix to this Volume, N^o 6.

‡ This being communicated to the Commons, they resolve, on the 2d of December, “That the Lords having not complied with

“the desires of the Commons for committing and sequestering the Earl of Clarendon, upon their impeachment of treason, is an obstruction to the public justice of the kingdom, and, in the precedent, of evil and dangerous consequence.”—See the debate previous to this resolution in the State Trials, Vol. II. p. 569—and in Grey’s Debates, Vol. I. p. 54.

§ Upon the report from this Committee, Sir William Penn is, on the 21st of April, suspended from sitting in the House whilst the impeachment against him is depending; and the Committee are further directed to search for precedents touching the expulsion of Members impeached.

reported,

reported, agreed to, and ordered to be ingrossed.—They are delivered at a Conference on the 24th; and Sir William Penn is ordered to attend at the Lords Bar on the 27th, to be heard what he has to say thereupon.—The Lords also direct their Committee of Privileges to peruse the Journals, and see what hath been the manner of proceeding against persons impeached by the House of Commons of misdemeanors *.—On the 27th of April, Sir William Penn desires further time, and to have Counsel assigned him; the Lords grant him a copy of his charge, allow him two more days to put in his answer, and assign him the Counsel, whom he names.—On the 29th he puts in his answer, a copy of which is sent to the Commons. It is read on the 4th of May, and the Committee appointed to prepare the impeachment are ordered to draw up a replication †.

32. On the 5th of December, 1678, after the charges of impeachment against the Lord Arundel of Wardour, and the other Lords, for being concerned in the Popish Plot, are delivered at the Bar of the House of Lords—a Committee is appointed, by the Commons, to prepare and draw up articles; and this Committee are impowered to send for persons, papers, and records.—On the 14th of December, the first twelve persons ‡ named on the Committee appointed a Committee of Secrecy, to draw up the articles, and prepare the evidence §.

33. When

* This Committee make their report on the 27th of April of several precedents; from which it appears that the practice, with respect to the commitment of such persons, had been various.—Sir William Penn was not taken into custody, either by the Lords or Commons.

† It does not appear that this Committee made any report, or that this matter proceeded farther.—This Sir William Penn was an Admiral; and was father to William Penn, the Quaker, the founder of the government of

Pennsylvania. See the life of the son, in the Biograph Britannica.

‡ The House being acquainted, by Mr. Speaker, that Mr. Vaughan was the thirteenth person—it is ordered, That Mr. Vaughan be added to the said Committee.

§ The accusation against these Lords was, upon the evidence of Titus Oates, for accepting commissions from the Pope.—Lord Arundel, that of Chancellor—Lord Powys, Treasurer—Lord Bellafaye, General—Lord Petre,

33. When the Commons, on the 23d of December, 1678, bring up the impeachment, with the articles of charge, against Lord Danby for High Treason, and other high crimes and misdemeanors, they pray, "That he may be sequestered from Parliament, and forthwith committed to safe custody."—The articles are read, and Lord Danby is heard in his place, in relation to the charge; and a question being put, "Whether the Lord Treasurer shall now withdraw?" it passed in the negative.—On the 27th of December, the Lords debate this message from the Commons, and propose several questions to the Judges *, which they answer: The question then being put, "Whether Thomas Earl of Danby, Lord High Treasurer, who stands impeached by the House of Commons, shall be now committed?" it was resolved in the negative †.

34. The

Lieutenant General—and Lord Stafford, Paymaster General.—See the account of this in Burnet's History, Vol. I. p. 430.

* These questions were:

1. Whether the Judges do not always commit, or take bail, upon an accusation, in due form, of misprision of treason?

To which the Lord Chief Justice gives the unanimous answer from all the Judges,—
"That the Court of King's Bench, upon an accusation of misprision of treason, do always commit, or take bail, as they think fit.

2. Whether, if any person shall be indicted by a grand jury of misprision of treason, the Judges are not in justice obliged to commit him, without taking bail?

To which they answer unanimously, "That the court of King's Bench may bail him."

3. Then it was proposed to the Judges, "Whether the Judges can bail any person, in case of misprision of treason, wherein the King's life is concerned?"

To which they severally answer, "That the court of King's Bench may take bail

"for High Treason of any kind, if they see cause."

† It appears from the Lords Journals, that the Lord Treasurer continued to sit, and to be present in the House of Lords, till the 30th of December, when the King prorogued the Parliament, and afterwards, by a proclamation dated the 24th of January following, dissolved it.—This refusal of the Lords to commit Lord Danby, brought on a debate, which is in Grey's Debates, Vol. VI. p. 399.—See in Burnet's History, Vol. I. p. 441, the ground on which the Lords proceeded, viz. "Whether this ought to be received as an impeachment for High Treason, only because the Commons had added the words *High Treason* in it;—and that, even supposing the charge to be true, it was not within the statute."—It appears, that the dispute between the two Houses on this subject was the cause of the immediate prorogation, and dissolution, of the Parliament.—Thus ended this Long Parliament, which had continued from the 8th of May, 1661, to the 24th of January, 1678—9, a period

34. The Parliament, in which Lord Danby, and the five Popish Lords, had been impeached, being dissolved by a proclamation of the 24th of January, 1678, and a new Parliament being summoned to meet on the 6th day of March following—on the 11th of March *, the Lords appoint a Committee, to consider in what state the impeachments brought up in the last Parliament now stand, and to report to the House.—On the 12th of March, Lord Shaftesbury reports how the impeachments stood, as well against Lord Danby, as against the Popish Lords, with all the circumstances that passed in the last Parliament †—This report is referred to the Committee of Privileges, to consider and to report their opinion thereupon to the House.—The King having, on the 13th of March, prorogued the Parliament for two days ‡—on the 17th of March, in the next session, the order to the Committee of Privileges is repeated, to consider of the state of these impeachments. And on the 18th Lord Essex reports, and refers for a state of the facts to the report made on the 12th of March; and that their Lordships are of opinion, “ That the dissolution of the last “ Parliament doth not alter the state of the impeachments brought

a period of almost eighteen years. In the interval, between the dissolution of this Parliament and the meeting of the next, Charles the II^d. granted a pardon to Lord Danby, the validity of which was so strenuously disputed by the House of Commons, as will be seen in the sequel of this work. Burnet's History, Vol. I. p. 453, and the Appendix to this Volume, N^o 7.

* The appointment of this Committee was in consequence of the speech of the Lord Chancellor Finch, afterwards Earl of Nottingham, on the first day of the session:—“ The King hath refused the petitions of the “ Lords, who, during the interval of Parliament, desired to be brought to their trial; “ and, after so long an imprisonment, might

“ reasonably have expected it: but his Majesty thought it fitter to reserve them to a “ more public and conspicuous trial in Parliament; for which cause their trial ought “ now to be hastened, for it is high time “ there should be some period put to the imprisonment of the Lords.”—Lords Journal, the 6th of March, 1678.

† See this report in the Lords Journal of the 12th of March.

‡ This prorogation was made necessary by the dispute which arose between the King and the House of Commons, about his Majesty's approbation of Sir Edward Seymour to be Speaker.—Upon this point, see Vol. II. of this work, p. 204 and 210.

“ up by the Commons in that Parliament.”—On the 19th of March, the Lords, after much consideration, agree with the Committee in this opinion *.

35. On the 20th of March, 1678, the Commons appoint a Committee of Secrecy, to take informations and prepare evidences, and to draw up articles against the Popish Lords impeached in the last Parliament, on the 5th of December, 1678; and they have power to send for persons, papers, and records.—On the 3d of April, 1679, these articles are reported; and on the 7th of April are ordered to be carried to the Lords, by Lord Russell.

36. On the 20th of March, 1678, the Commons resolve, *nemine contradicente*, that a message be sent to the Lords to put them in mind of the impeachment against Lord Danby †, and to desire that he may be forthwith committed to safe custody.—On the 22d ‡, this

* It may be curious to remark, that almost on the very first day of the meeting of the Parliament summoned by James II, viz. on the 22d of May, 1685, the Lords resolve, “ That this order of the 19th of March, 1678, shall be reversed and annulled as to impeachments.”—There is a protest signed by Lord Anglesey, and other Peers, against this resolution. (1.) “ Because it doth extrajudicially, and without a particular cause before us, endeavour an alteration in a judicial rule and order of the House, in the highest point of their power and judicature.” (2.) “ Because it shakes and lays aside an order made and renewed upon long consideration, debate, report of Commons precedents, and former resolutions, without permitting the same to be read, though called for by many Peers; and against weighty reasons, as we conceive, appearing for the same; and contrary to the practice of former times.” (3.) “ Because it is inherent in

“ every court of judicature to assert and preserve the former rules of proceedings before them, which therefore must be steady and certain; especially in this high court, that the subject and all persons concerned may know how to apply themselves for justice: The very Chancery, King’s Bench, &c. have their settled rules and standing orders, from which there is no variation.”—See, upon this subject, the proceedings in the third Chapter of this Title, in the case of impeachment of the Lords Peterborough and Salisbury, in October, 1690—and of the Duke of Leeds, the 24th of June, 1701.

† This impeachment, and the articles, had been carried up to the Lords in the former Parliament, on the 23d of December, 1678.

‡ The first message had been delivered by Lord Cavendish, on the 21st of March; but the consideration of it being adjourned by the Lords till the next day, occasions this new message.

message is repeated, and sent up by Lord Annesly*.—On the 24th of March, the Commons send up a third message to the same purport:—the Lords return for answer, That they had ordered him into custody, in compliance with the message from the Commons on the 22d.—On the 16th of April, 1679, Lord Danby surrenders, and is committed to the Tower.

* On this day, the 22d of March, and previous to the message brought by Lord Annesly, the King came to the House of Lords, and, in a speech from the throne to both Houses, acquaints them, " That he had granted his pardon, under his broad seal, to the Lord Treasurer, before the calling of this Parliament, for securing both his life and fortunes; and if there should happen to be any defect therein, in point of form or otherwise, I will give it him ten times over, rather than it should not be full and sufficient for the purpose I design it.—I have dismissed him my Court and Councils, and not to return."—See this speech, and the debate upon it, in Grey's Debates, Vol. VII. p. 19, et subseq.—The Commons immediately appointed a Committee to repair to the Lord Chancellor, and to enquire into the manner of suing forth this pardon; and upon their report, on the 24th of March, 1678, (which is entered in the Journal, and contains many very curious circumstances) they address the King, representing to " his Majesty the irregularity and illegality of this pardon, and the dangerous consequences of granting pardons to persons under an impeachment."—It appears from this report, that the Lord Chancellor Finch acquaints the messengers from the House of Commons, " That at the very time of affixing the seal to the parchment, he did not look upon himself to have the custody of the seal. That he knew there was no memorial in any office whatsoever of this pardon, from the Secretary's office, till it

" came to his Lordship; but that it was a stamped pardon by creation."—The following observations of Lord Clarendon (written several years prior to this event) are very pertinent upon this subject:—" There is a protection, very gracious and just, which Princes owe to their subjects, when, in obedience to their just commands, upon extraordinary and necessary occasions, in the execution of their trusts, they swerve from the strict letter of the law, which, without that mercy, would be penal to them.—In any such case, it is as legal (the law presuming it will always be done upon great reason) for the King to pardon, as for the party to accuse, and the Judge to condemn.—But for the sovereign power to interpose and shelter an accused servant from answering, does not only seem an obstruction of justice, and lay an imputation upon the Prince of being privy to the offence, but leaves so great a scandal on the party himself, that he is generally concluded guilty of whatsoever he is charged with.—And it is worthy the observation, that as no innocent man, who made his defence, ever suffered in those times, (speaking of the reigns of James the 1st, and Charles the 1st) by judgment of Parliament; so many guilty persons, and against whom the spirit of the times went as high, by the wise managing their defence, have been freed from their accusers, not only without censure, but without reproach."—History of the Rebellion, Vol. I. page 7.

37. The Lords, upon the 24th of March, 1678, after several repeated messages from the House of Commons to this purpose, order, "That Lord Danby, being impeached by the House of Commons of Treason, and other high crimes and misdemeanors, be taken into the custody of the Gentleman Usher of the Black Rod *."—In the former Parliament, when the impeachment was brought up, the Lords, on the 27th of December, 1678, upon a question put, had refused to commit him; or to order him to withdraw and be sequestered from Parliament.—To prevent any mischief arising from these precedents, the Lords, on the 10th of April, 1679, order that an entry be made in the Journal of this day, "That the vote of this House, of the 23d of December, 1678, concerning the Earl of Danby's not withdrawing, after he had been heard in his place upon the articles of impeachment brought up against him by the vote of the House of Commons; and the vote of the 27th of December, 1678, con-

* Lord Danby continued, under this commitment, a prisoner in the Tower, near five years (from April 1679 to February 1683.)—He made several applications to the court of King's Bench, at times when no Parliament was sitting.—The arguments used by himself and his Counsel, upon those occasions, on the 27th of May, and the 29th of June, 1682, are collected, and published in the State Trials, Vol. II. p. 738.—On the last day of Hilary Term, 1683, he was bailed by the court of King's Bench; upon condition to appear in the House of Lords, in the next session of Parliament, and not to depart without leave of that court.—In a note in the 2d Vol. State Trials, p. 756, it is said, "This was done on purpose to be a precedent for the four Popish Lords, who were bailed out that same day."—With regard to the Courts of Westminster Hall interfering, to set at liberty persons committed by either House of Parliament; see the following cases, (1.) In

1st Mod. Rep. p. 144, a full account of the case of the Earl of Shaftesbury in 1677, who, having been committed by the House of Lords for a contempt, was brought up by a Habeas Corpus; where, after several arguments, the Court of King's Bench determined, that they had no jurisdiction in the cause, and refused to bail him—"So he was remanded by the Court." (2.) In Salkeld's Reports, Vol. II. p. 503, Paty's case, where the defendants had been committed by the House of Commons in the cause of Ashby and White, in which the court, Holt dissentiente, refused to discharge them. (3.) See also in the State Trials, Vol. XI. p. 335, the case of Brads Crosby, Lord Mayor, who had been committed to the Tower by the House of Commons, and made application to the Court of Common Pleas in Easter Term, 1771, for his discharge from that commitment; which was refused both by the Court of Common Pleas, and by the Court of Exchequer.

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cerning his Lordship's not being committed; shall not be drawn into precedent for the future*."—And the Commons are to be acquainted at a Conference that this is done.

38. On the 7th of April, 1679, the Lords, on receiving the articles of impeachment against the five Popish Lords, directed their Committee of Privileges to consider of the method and progress of the proceedings to be had upon their trial.—On the 8th the Committee make their report†; and the Lords allow Counsel

* On the 12th of April, 1679, Sir Francis Winnington reports what passed at a Free Conference which had been held on the 10th; amongst other matters, That the Lord Privy Seal, Lord Anglesey, said, "that in the transaction of this affair, there were two great points gained by the House of Commons:

"The first was, That impeachments made by the Commons in one Parliament, continued from session to session, and Parliament to Parliament, notwithstanding prorogations or dissolutions:

"The other point was, That in cases of impeachment, upon special matter shewn, if the modesty of the party impeached directs him not to withdraw, the Lords admit, that, of right, they ought to order him to withdraw, and that afterwards he must be committed.

"His Lordship further observed, That a Member of the House of Commons mentioned the Earl of Clarendon's case at the Free Conference in the morning.—But in regard that case was general, and no special matter shewn, it was not like this: and therefore he did not understand the Lords intended to extend the points of Withdrawing, and of Commitment, to general impeachments without special matter alleged.—For, if it should be otherwise, the Lords did not know how many of their Lordships might be picked out of their House on a sudden."

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The Earl of Shaftesbury, said:—"In the first place, as to the right of the Commons, That upon impeachments the Lords accused ought to withdraw, and then be committed; their Lordships did agree it was their right, and well warranted by precedents of former ages: and as to the distinction that the Lord Privy Seal made, where the impeachments were general, and where special matter was alleged, he said, the Lords gave no order to make any such distinction, for that general impeachments were not in the case.—And the Duke of Monmouth, and the Lord Fauconberg affirmed the same, and that the Earl of Shaftesbury was in the right, and delivered the true sense of the Lords.—He also said, that by the expression which was sent with reasons the other day from the Lords, viz.—'That the Lords would not draw into example the proceedings of the Earl of Danby, but would vacate them,' they intend that to extend only to the points of not-withdrawing, and not-committing.—To this, that the Commons replied, That they hoped their Lordships did not think the Commons did take it, as if they had now gained any point; for that the points, which their Lordships mentioned as gained, were nothing but what was agreeable to the ancient course and methods of Parliament."

† One part of this report is, That the Lords may have Counsel to plead for them in

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matter

fel to the prisoners, and address the King to appoint a Lord High Steward.—On the 9th of April, the Lords are brought to the Bar *, and hear the articles of impeachment read;—they are allowed copies, and a time is fixed for delivering in their answers;—and that they shall have summons for the witnesses they shall want upon their trial;—and they are acquainted that all the Peers shall be summoned †, to the end there may be a full House at the said trial.—The Lords then direct that these five Lords, being impeached, shall stand committed to the Tower, there to be kept in safe custody, in order to their trial ‡.—On the 15th and 16th of April, Lord Belasyse §, Lord Powys, Lord Stafford, and Lord Arundel, put in their pleas,

matter of law, but not in matter of fact.—And that (in cases of impeachments, the Lord High Steward, or Lord Steward of the Household, being of right to supply the place of Speaker in the House of Peers) an address be made to his Majesty, that he will be pleased to appoint a Lord High Steward to supply the place of Speaker during the time of the said trial.—It is said, in a book, intitled, “Of the Jurisdiction in Parliaments,” chap. 5. p. 176, “All judgments for life or death are to be rendered by the Steward of England, or by the Steward of the King’s House.—And at such arraignment, the Steward is to sit in the Chancellor’s place.—And all judgments for misdemeanors, are to be by the Chancellor, or by him who supplies the Chancellor’s place.”—And afterwards, chap. 6. p. 180, “This I will say, the Chancellor never gave judgment on life or death—and the Steward never on misdemeanors.”—The work from whence these extracts are made, though called “A posthumous treatise of Mr. Selden’s,” is of very little authority, as there are several mistakes in it, and it is therefore very doubtful whether it was written by Selden.—In a copy of this book, in the library of Sir John Sebright at Beechwood, there is written in an old hand-writing, in the title-page, “This never was Mr. Selden’s.” It is how-

ever printed in the folio edition of Selden’s Works, published by Dr. Wilkins, Vol. III. Tom. 2d, p. 1587, but with this observation in the Preface to his English Tracts, “It was not published till 1681; it is a very maimed piece, and as such, does very little deserve to be placed among the works of so great a man as Selden was.”

* Four of the Lords appear, but Lord Belasyse, being confined to his bed with the gout, is allowed to have a copy of the articles, and Counsel to be assigned him.

† The Lord Chancellor is directed to write to every Peer, who is able to travel without danger of life, forthwith to attend, under the penalty of being taken into custody.

‡ There is also an order made for issuing a writ of certiorari, to bring in the several indictments, “whereby these five Lords have been found guilty of High Treason:” which are brought in accordingly on the 29th of April.

§ A debate arose in the House of Commons, on the 16th of April, Whether the Lord Belasyse is actually and legally arraigned, having not *in person* delivered his answer at the Bar of the House of Lords.—See this debate in Grey’s Debates, Vol. VII. p. 117, 121, and 130, particularly the speeches of Serjeant Maynard, Mr. Powle, and Mr. Seymour.—

On

pleas, stating the uncertainty of the several charges against them, and praying that they therefore may not be put to answer the said impeachments. Lord Petre pleads Not guilty.—These pleas are sent to the Commons, and by them referred to their Committee of Secrecy; who report, on the 23d of April, (1.) That the Lord Bellasysse, being impeached of High Treason by the Commons, cannot make any answer but in person. (2.) That the several writings put in by the Lords Powys, Stafford, and Arundel, which they call pleas and answers, are not pleas or answers, but argumentative and evasive, to which the Commons neither can nor ought to reply. (3.) The Commons therefore desire, that the Lords will order and require these four Lords to put in their perfect answers, or in default thereof, that the Commons may have justice against them.—These resolutions being communicated to the Lords at a Conference, and these exceptions being by the Lords communicated at the Bar to the impeached Lords, they severally, on the 25th and 26th of April, withdraw these answers, and plead Not guilty.—These pleas are referred by the Commons to the consideration of the Committee of Secrecy who prepared the articles; and on the 29th of April, the original pleas are re-delivered to the Lords*.

39. On the 2d of May, 1679, the Lords resolve to take into consideration, “Whether the Lords Spiritual are to vote in judgment, in cases of blood, or upon Bills of Attainder?”—On the

On the 25th of April, Lord Bellasysse is brought to the Bar of the House of Lords, where he withdraws his former plea, and puts in a plea of Not guilty.

* Sir J. Trevor reports to the Commons, that, upon delivering back these answers to the Lords, the Lord Chancellor had demanded of him, “Whether the Commons were ready to join issue?” to which he answered, “That he had nothing of that kind in command from this House; but that the Committee of

Secrecy would, with all convenient speed, prepare their evidence to make good the several charges and impeachments exhibited against the Lords in the Tower.”—On the 6th of May, a message is sent to the Lords, to acquaint them, “That the Commons are ready to make good their articles and charges.”—The Members of the Committee of Secrecy are appointed to manage the evidence.—The Lords fix the day of trial for that day sevensnight.

7th of May, this question is debated; but no resolution come to upon it*.—Upon the 12th and 13th of May †, a further discussion upon this matter is had at the Joint-Committee, composed of Members of both Houses, and appointed to consider of propositions and circumstances relative to the trial of the five Lords—and on the 13th the Lords resolve, “That the Lords Spiritual have a right to “ stay in court, in capital cases, till such time as judgment of death “ comes to be pronounced ‡.—On the 16th of May, the Commons insist, “That the Lords Spiritual ought not to have any vote in any “ of the proceedings upon the impeachments against the Lords in “ the Tower.”—And upon that day, the Bishops ask leave of the House of Lords, that they may withdraw themselves from the trials of the said Lords, with the liberty of entering their usual protestation.—On the 17th of May, the Commons object to this proceeding, “as, if the Bishops may have leave to withdraw, it implies a “ right; which if they have, it is a new Court, that the Commons “ cannot admit of:” And on the 19th they add, “That the Lords “ might as well make the Judges part of that Court as the Bishops,

* It appears from a copy of the warrant for the execution of the Lord Admiral Seymour, (which is entered amongst the records in the 2d volume of Bishop Burnet’s History of the Reformation, N^o 32) that it was signed by Archbishop Cranmer; “which,” says the Bishop, “seems a little odd; as it, being in a “ *cause of blood*, is contrary to the canon law; “ but, it seems, Cranmer thought his conscience was under no tie from these canons; “ and so judged it not contrary to his function “ to sign that order.” Burnet’s History of the Reformation, Vol. II, p. 100.

† With regard to this right of the Bishops to attend, the Lords urge, amongst other arguments, “That it belongs not to the Commons to be concerned in the constituting “ parts of the court upon these trials; but “ that the judgment of this matter belongs

“ entirely to the Lords; and when they have “ judged it, the Commons cannot alter it, “ and therefore should not debate it.”—The Commons pressing this matter farther, the Lords conclude by saying, “That this being a matter of judicature, they declare, “ that they will impose silence upon themselves, and debate it no farther.”—Lords Journal, the 13th of May.

‡ This vote of the 13th of May, “That, “ the Lord High Steward’s pronouncing the “ judgment of the court is, in time, after all, “ the Lords have voted; and consequently the “ Lords Spiritual may vote,” is, the next day, the 14th, explained by the Lords to mean, “That the Lords Spiritual have a right to “ stay, and sit in court, till the court proceed, “ to the vote of Guilty, or Not guilty.”

“ in this point.”—On the 23d of May, the Lords adhere, “ that they will give no other answer, than what is already given, “ concerning the Lords Spiritual *.” They again insist upon these votes on the 27th of May; and, the Commons adhering to their point, of excluding the Bishops from voting in these preliminary questions, the King is obliged to come and put an end to the Session by a prorogation †.

40. On

* This resolution of the Lords brought on a Conference between the two Houses, in relation to the points then depending; (1) with regard to the right of the Lords Spiritual to continue to sit and vote—and (2) upon the question touching the validity of the Earl of Danby’s pardon being pleadable in bar of his impeachment.—The reasons urged by the Commons are reported by Mr. Sacheverel on the 26th of May, and, as they contain much Parliamentary learning on the subject of impeachments, are inserted in the Appendix to this Volume, N° 7.—See also the debate upon these questions in Grey’s Debates, Vol. VII. p. 279, 292, 336, et subseq.—It is remarkable, that, (though this paper, containing the report, which was delivered to the Lords at a Conference, refers to *several other points*, that had been, and then were, in dispute between the two Houses relating to the law of impeachments; and though it was debated by the Lords for two days, the 26th and 27th of May) the Lords did not assign any answer to any part of this report, other than to resolve to insist upon their votes of the 13th and 14th of May, “ That the Lords Spiritual “ have a right to stay and sit in court, till the “ court proceed to the vote of Guilty or Not “ guilty.”—See upon this subject a book published in 1682, intitled, “ An Argument “ for the Bishops Right, in judging in Capital “ Causes in Parliament.” By Thomas Hunt, Esq;—and another work, intitled, “ Of the “ jurisdiction of the Bishops in Capital “ Causes;” written by Dr. Stillingfleet, after-

wards Bishop of Worcester, and much commended by Bishop Burnet. It is printed in Stillingfleet’s works, Vol. III. p. 814, and was written in answer to a letter that had been published by Lord Holles, in 1679, “ shewing, “ that the Bishops are not to be Judges in “ Parliament in Cases Capital.” See the three first chapters of Dr. Stillingfleet’s Tract, and his conclusions, p. 854.—As long ago, as in 1388; in the proceedings against Sir Robert Tresilian and others for High Treason, it is said, “ The Lord Chancellor, in the name of “ the Clergy, in open Parliament, made an “ oration, shewing “ That they could not by “ any means be present at proceedings, where “ any censure of death is to be passed.” The Clergy then delivered in a protestation to this purport to the Lords; and likewise sent their protestation to the Chapel of the Abbey, where the Commons sat; which was allowed of. —State Trials, Vol. I. p. 11.—See this Protestation in Rot. Parl. Vol. III. p. 236.—The Ecclesiastical Canon, by which it was ordained, “ That no Bishop, Abbot, or Clergyman, “ should judge any person to the loss of life or “ limb; or give his vote or countenance to “ any other for that purpose,” was decreed in a National Council, held at London in 1075, in the reign of Will. the 1st.

Carte’s Hist. of Eng. Vol. I. p. 430.

† By an article in the *Constitutions of Clarendon*, which were enacted in the reign of Henry the II, in 1164, it is declared, “ That the Archbishops, Bishops, and other Spiritual Dignitaries shall be regarded as Barons of the realm;”

40. On the 8th of April, 1679, the Lords, in consequence of a report from the Committee of Privileges, appointed to consider of the method and progress of the proceedings upon the impeachment of the five Lords, addressed the King, "That, in regard that, in cases of impeachment in Parliament, the Lord High Steward or Lord Steward of the Household being, of right, to supply the place of Speaker in the House of Peers, his Majesty will be pleased to appoint a Lord High Steward to supply the place of Speaker of the House of Peers, during the time of the trials of the Lords, now prisoners in the Tower, upon their impeachments."—On the 6th of May, they again address the King, to acquaint him, That the Lords having appointed to hear the Earl of Danby, to make good his plea of his pardon to the articles of impeachment—and, having fixed a day for the trial of the five Popish Lords, desire, "That his Majesty will be pleased to appoint a High Steward for the purposes aforesaid, to continue during the said trials."—And the Lords by message communicate this their proceeding to the House of Commons.—The Commons, on the 7th of May, appoint a Committee to inspect the Journals and search precedents in relation to this message.—On the 8th of May, Mr. Powle reports what is proper to be offered to the Lords upon this subject at a Conference, "That the Commons, supposing your Lordships do intend, in all your proceedings, to follow the usual course and method of Parliament, cannot apprehend, what should induce your Lordships to address his Majesty for a Lord High Steward, on Lord Danby's pardon, and the trial of the five Lords, as we conceive the constituting of a High Steward is not necessary; but that judgments may be given in Parliament, upon impeach-

realm; shall be bound to attend the King in his great councils; and shall assist at all trials, till the sentence, either of death or loss of members, be given against the criminal." M. Paris, p. 84.—Ten of the sixteen articles agreed to in the Council at Clarendon were

condemned by Pope Alexander the III^d; this however, was one of the six, which he tolerated, (Lord Littleton says) "not as good, but less evil."—*Life of Hen. II. Book the 3^d. Vol. II. p. 397.*

" ment,

"ment, without a High Steward,"—On the 12th of May, the Lord President, from the Joint-Committee of both Houses, appointed * to consider of propositions and circumstances in reference to the trial of the Lords, reports, "That the Commons having desired to see the commission prepared for a Lord High Steward in this case, and also the commissions in the Earl Pembroke's and Lord Morley's cases"—the Lords Committees had answered, "The High Steward is but Speaker *pro tempore*, and gives his voice as well as the other Lords; this changeth not the nature of the court †; and the Lords declared, that they have power enough to proceed to trial, though the King should not name an High Steward ‡.—This seemed to be satisfactory to the Commons, provided it were entered in the Lords Journals, which are records §."

41. On

* The Lords had twice, viz. on the 8th and 10th of May, refused to comply with the request of the Commons, to appoint this Joint-Committee; but after a Free Conference, which was held on *Sunday* the 11th of May, the Lords agree to it.—The Committee sat in the inner court of wards. See under title, "Joint Committees of Lords and Commons," Vol. III. p. 34.

† See a report from the Committee of Privileges, in the Lords Journal, of the 10th of January, 1689.

‡ On the same day the Lords came to the following resolution, "It is declared and ordered by the Lords Spiritual and Temporal, in Parliament assembled, That the office of a High Steward, upon trials of Peers upon impeachments, is not necessary to the House of Peers—but that that they may proceed in such trials, if a High Steward be not appointed according to their humble desire."—In fact, in the case of the Earl of Strafford, "the House of Lords" appointed the Lord Steward of the Household

to be Lord High Steward for the occasion.—See before, p. 168, N° 14.—On this subject of the Lord High Steward's Commission, and the nature of the court where a Peer is tried for a capital offence, either on impeachment or indictment, before the King in Parliament (as distinguished from the High Steward's court) consult a very learned dissertation of Mr. Justice Foster's, published in his "Crown Law," p. 138.

§ This order is reported from the Joint-Committee on the 13th of May, and is agreed to in the following terms; "That an office of an High Steward, upon trials of Peers upon impeachments, is not necessary to the House of Peers; but that the Lords may proceed in such trials, if an High Steward be not appointed according to their humble desire. —There may be a commission for an High Steward, to bear date after the said order, so as the words in the commission perused be thus changed—viz. instead of 'ac pro eo quod officium Seneschalli Angliæ, cujus presentia in hac parte requiritur, ut accipimus,'

41. On the 3d of May, 1679, a message from the Lords, to acquaint the Commons, That their Lordships having, at the desire of the Commons, demanded of the Earl of Danby, “Whether he would rely upon and abide by the plea of his pardon?”—Lord Danby had answered by word of mouth, “The plea which I have put in, was put in by the advice of my Counsel; and my Counsel tells me, that my pardon is a good pardon in law, and advise me to insist upon my plea put in; which I now do; and I do desire, that my Counsel may be heard, to make out the validity of my pardon.”—The House of Commons, on the 5th of May, take this message into consideration, and resolve, (1.) *Nemine contradicente*, “That the pardon pleaded by the Earl of Danby is illegal and void, and ought not to be allowed in bar of the impeachment of the Commons of England.”—(2.) *Nemine contradicente*, That the whole House will go up to the Lords Bar, and demand their judgment against the Earl of Danby—for that the pardon by him pleaded is illegal and invalid, and ought not to bar or preclude the Commons from having justice upon their impeachment*.—And a Committee

“*pinus, jam vacat,*’ may be inserted ‘*ac pro eo quod Proceres et Magnates in Parlamento nostro assemblebat. Nobis humiliter supplicaverunt, ut Seneschallum Angliæ pro hac vice constituere dignaremur.*’”—See the Lords Journal of the 13th of May, and the report of this transaction in the Commons Journal of the 15th of May.—The commission, which had been issued under the Great Seal for constituting a High Steward for the trial of Lord Danby, is ordered to be recalled; and a new commission to be issued, worded according to this alteration; and to bear date after this resolution.

* On the 9th of May, the Lords having appointed a day for hearing Lord Danby’s Counsel, to make good his plea of pardon, the Commons resolve, That no Commoner whatsoever shall presume to maintain the validity

of the pardon pleaded by the Earl of Danby, without the consent of this House first had; and that the persons, so doing, shall be accounted betrayers of the liberties of the Commons of England.—See the Journal of the Lords of the 10th of May, respecting this resolution.—See in Vol. VII. of Grey’s Debates, the debates upon this, and the several other very important questions, that arose out of these impeachments.—In the year 1791, pending the trial of the impeachment of Mr. Hastings, a small pamphlet was printed and published, intitled, “A treatise of the King’s power of granting pardons in cases of Impeachment,” by Heneage Earl of Nottingham, Lord High Chancellor.—In the advertisement prefixed to it, is the following entry,—“There is a memorandum in the first leaf of this tract in the hand writing of Nicholas Hardinge, Esq. Clerk

Committee is appointed to prepare and draw up reasons, why this House is of this opinion, upon these two points *.—On the 6th and 8th of May, the Lords appoint a day for hearing the Earl of Danby, by his Counsel, to make good his said plea.

42. On the 5th of May, 1679, the Commons, having resolved, "That the Lord Danby's pardon is illegal and void, and ought not to be pleaded in bar of his impeachment †;" and that therefore they

Clerk of the House of Commons, in the following words, "This treatise was transcribed from a MS. communicated to me, by the right honourable Arthur Onslow, Speaker of the House of Commons; which was transcribed from a manuscript communicated to him by Daniel now Earl of Winchelsea and Nottingham, who assured Mr. Onslow, that it was written by Lord Chancellor Nottingham, upon the occasion of Lord Danby's pardon." "N. Hardinge Dec. 1, 1731."—It is very properly observed in that advertisement, "That the opinion delivered by Lord Nottingham in this treatise, viz. "That impeachments do not remain in statu quo from Parliament to Parliament," is very different, from that which he delivered and acted on upon the trial of Lord Stafford."—Another observation is very obvious on the doctrine contained in this pamphlet, which is, That, however clear Lord Nottingham might be, when he wrote this treatise, "That the King might legally grant a pardon, which might be afterwards pleaded in bar of any impeachment," it appears from the report of the Committee of the House of Commons, (on the 24th March, 1678, who were ordered to attend his Lordship, to enquire into the manner of suing forth Lord Danby's pardon) that he was so cautious on that occasion, as to be able to assure the House of Commons, "That he neither advised, drew, or altered one

"word of it." And afterwards, when the King ordered the seal to be affixed, "it was done by the person who usually carries the purse; and that, at that very time, he did not look upon himself to have the custody of the Seal."

Lord Nottingham's Treatise was printed for T. Payne at the Mews Gate.

* See these reasons, as reported by Mr. Sacheverel, in the Commons Journal of the 26th of May, and in the Appendix to this volume, N^o 7.

† On the 2d of February, 1688, one of the general heads reported, from the Committee appointed to consider of such things as are absolutely necessary for the better securing of our religion, laws, and liberties, is, "That no pardon is to be pleadable to an impeachment in Parliament;" and this is agreed to by the House.—This head is, however, left out of the report which is made on the 7th of February, as is there stated, "for divers weighty reasons." It appears, from Grey's Debates, Vol. IX. p. 72, that these reasons were, that the Committee were divided in opinion, Whether this declaration upon this point should be made.—Subsequent to this, the House of Commons, on the 4th of June, 1689, in considering the heads of a Bill of Indemnity; and a debate arising, Whether a pardon is pleadable in bar of an impeachment in Parliament? resolve, "That it is the opinion of this House, that a pardon is not pleadable in

they will go up to the Lords, and demand judgment against the Lord Danby; appoint a Committee to prepare a form of words*, to be delivered at the Bar of the House of Lords, touching the illegality and invalidity of the said pardon, and the judgment to be demanded by the House against the said Earl.—The Speaker accordingly, with the Commons, go up and demand judgment†; notwithstanding which, the Lords, on the 6th of May, appoint a day for hearing Lord Danby to make good his said plea.

43. On the 8th of May, 1679, the Commons propose to the Lords, that a Committee of both Houses may be nominated, to consider of the most proper ways and methods of proceedings upon impeachments of the House of Commons, according to the usage of Parliament—in order that the inconveniences may be avoided, which might otherwise arise from the several interruptions and delays in the proceeding.—This proposal the Lords refuse to comply with, “because they do not think it conformable

“in bar of an impeachment in Parliament.”—See the debate upon this question in Grey’s Debates, Vol. IX. p. 281.—Sir William Williams says, “If a subject be murdered, the next of kin may bring an appeal; and for this reason an appeal is not pardonable, because it is at the suit of the subject; and an impeachment is an appeal of all the Commons of England.”—See also Mr. Hawles’s speech, p. 285.—However, by the stat. 12 and 13 William III. ch. 2. sect. 3, it was afterwards enacted, “That no pardon under the Great Seal of England be pleadable to an impeachment by the Commons in Parliament.”

• This form is reported; and is as follows:
My Lords,

The Knights, Citizens, and Burgeses, in Parliament assembled, are come up to demand

judgment in their own names, and the names of all the Commons of England, against Thomas Earl of Danby, who stands impeached by them before your Lordships of High Treason, and divers high crimes and misdemeanors; to which he has pleaded a pardon—which pardon the Commons conceive to be illegal and void; and therefore they do demand judgment of your Lordships accordingly.

† The entry in the Lords Journal of the 5th of May is, “The Speaker, with the Commons, being come up to the Bar (but the Mace was not advanced) said,” &c.—See also in Grey’s Debates, Vol. VII. p. 185, the account of the form of the Commons demanding judgment against the Earl of Middlesex and Lord Chancellor Bacon, “That the Commons came with their Mace declined, held down.”

“to

“to the rules and orders of proceedings of this Court, which is, “and ever must be, tender in matters of judicature.”—The Commons, on the 10th of May, acquaint the Lords, “That things “standing thus upon this answer, they cannot proceed upon “the trial of the Lords, before the method of proceeding be “adjusted between the two Houses.”—The Lords, however, again refuse to agree to the appointment of a Joint-Committee.—This brought on a Free Conference, which was held on Sunday the 11th of May; the effect of which was, to induce the Lords to agree to the Committee; which was accordingly appointed, consisting of twelve Lords and twenty-four Commoners*, to consider of propositions and circumstances, in reference to the trials of the Lords in the Tower.

44. On the 10th of November, 1680, the Commons resolve, they will proceed in the prosecution of the Lords in the Tower, and will begin with the Lord Viscount Stafford †; and on the 12th of November, they communicate this resolution to the Lords, and desire the Lords to appoint a day for the trial ‡. The Lords im-

* What were the subjects of discussion at this Committee, and in what manner they were reported to both Houses, with the instructions which were given from time to time by either House to their Committee, will appear from consulting the Journals between the 11th of May and the 27th, the day on which the Parliament was prorogued.

† This was in the new Parliament, the third called by Charles II. which had been summoned to meet on the 7th of October, 1679, but which had been prorogued by his Majesty's commission from time to time till the 21st of October in the next year, 1680.—The House of Commons, on the 10th of November, appointed a Committee to inspect

the Journals of the two last Parliaments, relating to the impeachments of the Lords in the Tower.

‡ The Commons, at the same time, address the King, that he will give order for the issuing out a sum of money, for defraying the charges of summoning the witnesses, and other expences incident in the prosecution and trial of the Lords in the Tower.—And they order, that such money as shall be issued for the uses aforesaid be deposited in the hands of Mr. Charles Clare.—Mr. Secretary Jenkins reports his Majesty's answer, on the 13th of November, “That he had directed a hundred “pounds to be issued accordingly.”

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mediately appoint the day; and address the King that he will appoint an High Steward.

45. On the 23d of November, 1680, the Lords appoint a Committee, to advise and consider of what directions, rules, and methods are fit to be observed for the preservation of order and regularity in the trial of Lord Stafford*.

46. On the 25th of November, 1680, the Commons send a message to the Lords, to desire that a Committee of the Lords may be appointed, to join with the Committee of the Commons, for adjusting the methods and circumstances relating to the trials of the Lords in the Tower—to which, on the 27th of November, the Lords agree†.

47. On the 29th of November, 1680, at a meeting of this Joint-Committee, the Commons are permitted to have inspection of the Commission of the Lord High Steward‡; and are acquainted that the Bishops do not intend to go

* See the report from this Committee in the Lords Journal of the 26th of November, part of which is directed to be sent to the Commons.—This message is sent by Sir Timothy Baldwin, Knight, and the Clerk of the Parliaments. These messengers not being the usual messengers from the Lords, the Commons appoint a Committee to inspect the Journals of this House, and search precedents touching the bringing of messages from the Lords House; and that, in the mean time, the Clerk do respite the entry of this message in the Journal.—This message is not entered in the Commons Journal.—In the 8th vol. State Trials, Appendix, N° 40, there is a paper inserted, written by Mr. Gregory King, Lan-

caster Herald, intitled, “Method of proceeding upon the trial of a Peer.”

† The Committee appointed by the Lords consists of five—that of the Commons of ten.

‡ This is in consequence of a question asked at the Committee by the Commons, Whether the Commission of the Lord High Steward was drawn in the same manner, as that in the last Parliament?—and, Whether the clause—*Cujus presentia in hac parte requiritur*, was inserted? The Lords answer, That the Commission differs not from that passed in the last Parliament, otherwise than inserting the Lord Stafford's name instead of the five Popish Lords.—See before the notes in p. 186.

into Westminster-hall, to be present at the trial of the Lord Stafford*.

48. On the 29th of November, 1680, it is agreed at the Joint-Committee, upon the objection made by the Commons to one of the rules laid down by the Lords, viz. "That when the Commons should ask any questions at the trial, they should apply themselves to the Lord Steward," that the Managers should speak to the Lords as a House †, and say "My Lords," and not to the Lord High Steward, and say, "My Lord," or "Your Grace."

49. On the 29th of November, 1680, the House being informed, from the Committee appointed to prepare evidence against the Lords

* See, in the Lords Journal of the 29th and 30th of November, the declaration and protestation of the Bishops, delivered by the Bishop of London, with which (it is said in the Journal) the Committee of the Commons were satisfied.—The protestation is as follows:—"The Lords Spiritual of the House of Peers do desire the leave of this House to be absent during the trial of the Lord Viscount Stafford; by protestation saving to themselves and their successors, all such rights in judicature as they have by law, and by right ought to have."—It appears, from the Lords Journal, that, during Lord Stafford's trial, several Bishops were present in the House of Lords in the morning, but that none of them went down into Westminster-hall.—On the trial of the Earl of Warwick "for murder," on the 28th of March, 1679, in Westminster-hall, it appears, that the Bishops went in the procession from the House of Lords, and were present during the trial; but that, when the evidence was closed, and the Lords had adjourned to their own House, and before they proceeded to consider of the

method of the Peers giving judgment, the Archbishop of Canterbury, in behalf of himself and the rest of the Bishops, offered a protestation, "desiring leave to be absent, but saving to themselves and their successors, all such right in judicature, as they have had by law, and of right ought to have." Then he asked leave to withdraw; to which the Lords agreed; and the Bishops withdrew accordingly.

† The exception taken by the Committee of the Commons, was, that the Lord High Steward is not a necessary part of the court, but is only as Speaker of the House of Lords.—The Lords, conformably to this doctrine, on the 29th of November, order, "That the Lord Stafford shall be directed to apply himself to the Lords, and not to the Lord High Steward, as often as he shall have occasion to speak at this trial." This direction arose from the distinction mentioned before by Mr. Justice Butler, (where a trial of a Peer is held in full Parliament) between "the Court of the King in Parliament" and the Court of the "High Steward."—Earl Rivers's case, Crown Law, p. 141.

in the Tower, that a certain person at Shrewsbury, being summoned to appear as a witness in the trial, had refused so to do, and that it was not convenient that his name should yet be publicly known; it is ordered, That Mr. Speaker do issue his warrant to the Serjeant at Arms, to bring the said person in custody; he to be named to Mr. Speaker from the Committee for that purpose.

50. On the 29th of November, 1680, the House appoint a Committee to view the scaffold in Westminster Hall. They had previously, on that day, resolved to attend as a Committee upon Lord Stafford's impeachment; and the Members are to sit together in the place prepared for them, without mingling with any other persons.—The Commons, on the same day, give leave to Sir Walter Bagot, a Member, to appear as a witness on the trial.

51. On the 23d of December, 1680, Mr. Seymour delivers in his answer to the articles of impeachment in writing; and the Lords immediately transmit it to the House of Commons.—On the 3d of January *, the Commons appoint a Committee to prepare evidence against Mr. Seymour, and manage the same at his trial †.—This Committee do not make any report; and on the 8th of January, the Lords send word, That they have fixed the 15th of January for Mr. Seymour's trial, "that the Commons may reply, if they think fit."

52. On the 7th of January, 1680, when the articles of impeachment for high treason, and high crimes and misdemeanors, are exhibited against Sir William Scroggs, Lord Chief Justice of the King's

* This was not until the Lords had sent a message to the Commons to acquaint them, that Mr. Seymour had presented to them a petition, desiring a day might be fixed for his trial—and that their Lordships, finding no issue by replication of the Commons, had

thought fit to give the Commons notice thereof.

† This Committee have power to sit *de die in diem*, and to send for persons, papers, and records.—They are not intrusted to prepare a replication.

Bench, in which the Commons pray, "That he may be committed to safe custody," the Lords refuse putting the question, Whether he shall be committed or not *?—and order him to find security for his appearance, to attend upon the court from time to time, till he be discharged of his impeachment.

53. On the 8th of January, 1680, the Commons resolve, That a Committee be appointed to inspect the Journals of both Houses, and precedents to justify and maintain, That the Lords ought to commit persons to safe custody, when impeached for High Treason by the Commons in Parliament †.

54. On the 24th of March, 1680, Sir William Scroggs, Chief Justice of the King's Bench, delivers in his answer to the articles of impeachment of "High Treason," which had been brought up against him in the former Parliament ‡.—On the 25th of March, this answer is sent to the Commons, with a petition from Sir William Scroggs §, desiring a speedy trial ||.

55. When the message for impeaching Edward Fitzharris for High Treason is carried up to the Lords Bar, on the 26th of March,

* Several Lords enter their reasons for dissenting to this refusal; one of which reasons is, "That this matter hath been twice adjusted between both Houses, viz. in the cases of "the Earl of Clarendon, and the Earl of "Danby."—The ground upon which the Lords proceeded, in not committing Sir William Scroggs, was the same doubt that had been before entertained in the House of Commons on voting the articles, "Whether the "charges alleged amounted to the crime of "High Treason."—Grey's Debates, Vol. VIII. p. 287.

† See the debate preparatory to this resolution, in Grey's Debates, Vol. VIII. p. 285.

‡ These articles had been brought up on

the 7th of January, 1680.—The Parliament was dissolved on the 18th of January.—And the new Parliament met on the 21st of March, at Oxford.

§ Neither this answer or petition allege any objection, on the part of the Chief Justice to the competency of the House of Lords to try him for the crime of High Treason, though a Commoner; or, that the dissolution of Parliament had made any alteration in the state of the impeachment.

|| On the 24th of March, the Lord Danby petitions the Lords, complaining that he had been detained a prisoner in the Tower, for above three and twenty months last past, and desiring to be bailed.

1681, Mr. Attorney General acquaints the House, "That he had an order from his Majesty, dated the 9th of March, to prosecute Fitzharris at law, and that accordingly he had prepared an indictment against him at law *." Upon this the Lords resolve, "That Fitzharris shall be proceeded with according to the course of the common law, and not by way of impeachment in Parliament at this time †."

56. On

* On the 22d of March, 1688, Mrs. Fitzharris petitions the House of Commons touching the case of her husband; this petition is referred to a Committee on the 15th of May, 1689, who report on the 15th of June; and on their report, the House recommend this case of Mrs. Fitzharris to his Majesty.

† This resolution of the Lords produced several resolutions on the part of the Commons, and a protest from several Peers, relating to the right of the Commons to proceed in this case by impeachment; which are inserted in the Appendix, N^o 8—See also the debate upon this subject, in Grey's Debates, Vol. VIII. p. 332.—Bishop Burnet says, "This pretence, of the Lords having no right to try a Commoner upon an impeachment for High Treason, was furnished by Lord Nottingham; and was grounded upon the case of Simon de Beresford, in the 4th Edward III.;" (which see before in this Vol. p. 54.)—The Bishop very pertinently observes, "That if this doctrine were true, and good law, it would be a method offered to the Court to be troubled no more with impeachments, by employing only Commoners." So Sir William Jones says, "If this was so, it would be in the power of the King, by making only Commoners Ministers of state, to subvert the Government by their contrivances when they pleased. Their greatness would keep them out of the reach of ordinary courts of justice; or their treasons might not perhaps be within the statute, but such as fall under the cognizance of no other court than the Parliament; and

"if the people might not of right demand justice there, they might, without fear of punishment, act the most destructive villainies against the kingdom; it would also follow, that the same fact, which in a Peer is treason, and punishable with death, in a Commoner is no crime, and subject to no punishment."—Lords Debates, printed in 1742, Vol. I. p. 296, 298.—See, in the 1st vol. of Lords Debates, p. 256, an account of this Fitzharris, and of the transaction in which he was engaged, which brought on this impeachment.—In the same volume, p. 264, is a pamphlet, written by Sir William Jones, intitled, "A just and modest Vindication of the Proceedings of the two last Parliaments," published in 1731; in which, p. 296, the question is discussed, "Whether, by the law and custom of Parliament, the Lords ought to try Commoners impeached by the Commons in Parliament." The proceedings in Parliament against Fitzharris, and in the court of King's Bench upon his arraignment and his trial, are all published in the State Trials, Vol. III. p. 224, et subs.—It appears that the foreman of the jury doubted their competency to pronounce a verdict in this case, on account of the impeachment by the House of Commons, and suggested this difficulty to the court, before the jury withdrew—but this objection was over-ruled by the Judges. In the course of those proceedings, Sir William Williams says, "By the way, I think it will not be denied, but that the Commons in Parliament may impeach any Commoner of treason, before the Lords in Parliament. I take that to be admitted;

56. On the 19th of May, 1685, the first day of the first Parliament of King James the II^d, the Earl of Danby, Lord Powys, Lord Arundel, and Lord Bellafyse (who had been bailed by the court of King's Bench in 1684, under a recognizance to appear in the House of Lords the first day of the next Parliament) were called to the Bar. They then petition to be discharged; and the Lords order, That their appearance shall be recorded, and that they shall attend till further order *.

57. On the 22d of May, 1685, upon consideration of the cases of the Earl of Powys, Lord Arundel, Lord Bellafyse, and the Earl of Danby, the question was proposed, "Whether the order of the 19th of March, 1678 †, shall be reversed and annulled as to "Impeachments?" and resolved in the affirmative.

"mitted; and I don't find that Mr. Attorney General denies it, or makes any doubt about "it." State Trials, Vol. III. p. 240.—See Remarks on Fitzharris's trial, by Sir John Hawles, afterwards Solicitor General, in the State Trials, Vol. IV. p. 165.—and Hume's account of this affair in *Hist. Eng.* Vol. VI. Ch. 6. p. 332 and 336.

* On the 25th of May, the indictments which had been found against the Popish Lords, are ordered to be produced to the At-

torney General, who had received an order from the King to enter a *Noli Prosequi*; and the bail given by them in the King's Bench are discharged.—And on the 1st of June, the Lords order, "That Lord Danby, Lord Powys, Lord Arundel, Lord Bellafyse, and Lord Tyrone, as also all persons, Peers or others, that were bail for the appearance of the said Lords, be, and are hereby discharged."

† See before, p. 182, note *.

V. *Proceedings on the Trial.*

1. **O**N hearing evidence by the Lords against Sir Giles Mompeffon, it does not appear, that the Commons were ever present, or appeared as parties, except first at the Conference, where they state the grievances of which they complained *, and shewed how Sir Giles Mompeffon was concerned in them; and afterwards when they demanded judgment. The Lords summon the evidence †, and examine them upon oath; and when the enquiry is gone through, on the 26th of March, 1621, the collection of offences upon the several heads are read, and the Lords come to resolutions upon the several facts, and “that all other his offences and abuses were duly proved against him.” They afterwards enter into a long debate what his punishment should be—and, having determined, they signify to the Commons, “That if they, with their Speaker, will, according to the ancient custom of Parliament, come to demand of the Lords, That judgment be given against

* It appears from the Journal of the 6th of March, 1620, and from the Parliamentary Proceedings, 1620-1, Vol. I. p. 123, that the manner of delivering this charge was, to be divided into six parts, and that six Members should every one deliver his part to the Lords.—Sir Dudley Diggs to make the introduction—Mr. Crewe, Mr. Finch, and Mr. Hackwell, to open and state the matters complained of—Sir Edwin Sandys to make a collection or amplification of all these businesses—and Sir Edward Coke to make the conclusion, by declaring to the Lords precedents, how heretofore others, offending in like manner, have been by the Houses of Parliament punished.—See, upon the 8th of March, Sir Edward Coke’s report of the precedents he had found, as well of judicature as of punishment.

† But on the 15th of March, 1620, the Lord Chancellor moves, That the Lords Committees, to whom the several heads of grievance had been referred, should confer with Mr. Thomas Crewe, Mr. Recorder Finch, and Mr. Hackwell, “for that these gentlemen, being Members of the lower House, had taken pains in the several examinations of these grievances.”—And on the 26th of April, 1621, upon hearing the charge and proofs against Sir Francis Michell, Sir Randolph Crewe (then an assistant to the House of Lords, as King’s Serjeant, and who was afterwards Chief Justice) came to the Clerk’s table and opened the offences and the proofs.—Sir Francis Michell was then heard, and made his answer to each charge.

“ Sir

“ Sir Giles Mompesson, for the heinous offences by him committed, they shall be heard.”—To which the Commons answer, They will come and demand it.

2. See, in the Lords Journals from the 20th of March, 1620, to the third of May, 1621, the proceedings against the Lord Chancellor Bacon, upon the charge exhibited against him by the Commons *.—On the 24th of April, it was debated, Whether the Lord Chancellor should be brought to the Bar, to hear the charges? or that, respect being had to his person (as yet having the King's Great Seal) the charge should be sent in writing?—and agreed it should be sent in writing.—On the 30th of April, Lord Bacon sends in writing his confession and humble submission †.

3. On the 24th of April, 1624, the Archbishop of Canterbury reports from the Committee appointed to examine into the matters charged against the Lord Treasurer Middlesex, a part of the charge

* Neither the Commons or any Committee were present as accusers during any part of these proceedings; they exhibited the complaints at a Conference, and transmitted such proofs as had come out before them, upon an examination taken by the Grand Committee for Courts of Justice; upon which, they desire, If the Chancellor be found guilty, he may be punished; if not guilty, the accusers to be punished.—There were no further proofs given of these accusations, nor were they opened or urged in the House of Lords, except by the report of the Conference; this being rendered unnecessary by the Chancellor's sending his humble confession and submission.—The Commons come, on the 3d of May, to demand judgment.—See the proceedings in both

Houses against Lord Bacon, collected in the State Trials, Vol. I. p. 353.

† This submission and confession (which see before in the Notes, p. 100,) being expressed only in general terms, was not considered by the Lords as full and satisfactory, Lord Bacon therefore sent another paper, intitled, “ The humble confession and submission of me *The Lord Chancellor*.”—“ Upon advised consideration of the charge, descending into my own conscience, and calling my memory to account, so far as I am able, I do plainly and ingenuously confess, that I am guilty of corruption; and do renounce all defence, and put myself on the grace and mercy of your Lordships.” And he then enters into all the particular charges, which he confesses.—State Trials, Vol. I. p. 361.

arising out of the examination of the witnesses ;—this is ordered to be sent * to the Lord Treasurer, and that he do appear on Thursday next to answer his charge at the Bar.—On the 26th of April, a Committee is appointed to search for precedents, in what manner the parties complained of have answered † ; and the Lord Treasurer having, on the 27th, applied by petition for Counsel, the Lords give leave that he may use what Counsel he please, to advise him for his defence ; but that it stands not with the order of the House, to allow Counsel at the Bar in cases of this nature ‡.

4. The Duke of Buckingham having been by the Commons impeached of several crimes ; and articles being exhibited against him, he, on the 8th of June, 1626, delivers in to the Lords his

* The following memorandum is ordered to be entered in the Lords Journal of the 24th of April ; “ Whereas, by the ancient customs “ of this House, the parties accused and complained of are to receive their charge at the “ Bar ; yet, at this time, in regard the Prince “ and many other Lords are attending necessarily the King at Windsor, for the solemnizing Saint George’s feast, and cannot return, “ to be here till Thursday next ; therefore, “ for gaining of time, and also that the Lord “ Treasurer might have his time to prepare “ his answer, it was agreed that his charge “ shall be sent unto him in writing.—But this “ to be no precedent for the future.”

† On the 27th of April, the Earl of Bridgewater reports from this Committee, That they did not find by any precedent, that any, though a Member of this House, did answer by his Counsel ; and that divers Members of this House have answered in person and without Counsel ; and that Counsel was denied unto Michael de la Pole, Lord Chancellor, the 10th year of Richard the III. when he required the

same—The precedent referred to, by the Committee, is as follows, “ Le dit Conte de “ Suffolk avoit ordeigne, que Monsieur Richard le Scrop, son Frere en Loi, averoit les “ Paroles de sa reponse des ditz Empechementz : a quelle chose les Seigneurs disoient, que feust honest pur lui de respondre “ par sa Bouche demesme.”—Rot. Parl. Vol. III. p. 216. N° 7.

‡ When the Lords had gone through all the charges against Lord Middlesex, and had heard him in his defence, the opinion of the House of Lords is taken on each separate article of charge—on the 12th of May, 1624, “ Whether upon that charge the Lord Treasurer be censurable or no ?” Upon some he is acquitted.—They then proceed to consider, What punishment shall be inflicted upon him, on account of those misdemeanors which have been proved against him—and resolve upon several—fine, imprisonment, and disqualification from holding offices or sitting in Parliament.

answers to each particular charge *.—On the 9th of June, a message is sent to the Lords, to require a copy of the Duke's answer, that the House may make a reply to it with as much speed as possible.—The answer is sent to the Commons on the 10th †.—And on

* See these answers, with the Duke's introductory speech at length, in the *Lords Journals*.

† In the famous remonstrance, which was prepared at this time by the Commons, and was intended to have been presented to the King (but from doing which they were prevented by the dissolution of the Parliament, on the 15th of June) these charges against the Duke of Buckingham were recapitulated; and the Commons desire, that, for these and other reasons there alleged, "the King would be graciously pleased to remove this person from access to his sacred presence."—The King was so offended with this remonstrance, that he published a proclamation, "commanding all persons, of whatsoever quality, upon pain of his indignation and high displeasure, who have, or shall have hereafter, any copies or notes of the said remonstrance, or shall come to the view thereof, forthwith to burn the same; that the memory thereof may be utterly abolished, and never give occasion to his Majesty to renew the remembrance of that, which, out of his grace and goodness, he would gladly forget."—See this remonstrance, together with the King's declaration, in which were contained his reasons for dissolving the Parliament, in the *Parliamentary History*, Vol. VII. p. 300 to 320.—See also, in Lord Clarendon's *History of the Rebellion*, Vol. I. p. 6, et subseq. his observations upon the dissolution of this and the next Parliament, and the fatal consequences of those measures; all which he attributes to the imprudent counsels of the Duke of Buckingham and the Lord Weston.—"I wonder less at the errors of this nature in the Duke of Buckingham; but that the other, the

Lord Weston, who had been very much and very popularly conversant in those Conventions; who exactly knew the frame and constitution of the kingdom, the temper of the people, the extents of the courts of law, and the jurisdiction of Parliaments, which, at that time, had seldom or never committed any excess of jurisdiction, (modesty and moderation in words never was nor ever will be observed in popular councils, whose foundation is liberty of speech) that he should believe, that the union, peace, and plenty, of the kingdom, could be preserved without Parliaments, or that the passion and distemper, gotten and received into Parliaments, could be removed and reformed by the more passionate breaking and dissolving them; or that that course would not inevitably prove the most pernicious to himself, is as much my wonder, as any thing that has since happened."—The truth of this observation of Lord Clarendon's was confirmed by what followed immediately after.—The Commons, in the very next Parliament, on the 11th of June, 1628, in another remonstrance, repeat their complaints against the Duke of Buckingham, declaring, "The principal cause of all these evils and dangers, we conceive to be the excessive power of the Duke of Buckingham, and the abuse of that power."—See this remonstrance in the *Parliamentary History*, Vol. VIII. p. 219.—Soon after this, on the 23d of August, 1628, the Duke was stabbed by Felton at Portsmouth; and one of the reasons given by Felton, before the Privy Council, for his committing this act, was, the words in this remonstrance.—*Rushworth's Collections*, Vol. I. p. 638.

the 15th of June, the Parliament is dissolved by a Commission read in the House of Lords.

5. On the 11th of June, 1628, Dr. Mainwaring having been taken into custody, upon the charge of the Commons, for having published, in his Sermons *, tenets derogatory to the rights and liberties of the subject; and the Lords having examined witnesses to prove his preaching and publishing these sermons; he is brought to the Lords Bar, and the charge is opened by the Prime Serjeant and Attorney General; and, being asked, by the Lord Keeper, Whether he doth acknowledge these tenets? he absolutely denies them; but, upon evidence being produced, he desires to have a copy of the charge in writing, and Counsel allowed him, and further time to make his defence.—On the 13th of June, he is heard at the Bar in his defence; and, being withdrawn, the Lords are of opinion that he be censured for his crime; and agree upon his sentence: Judgment is demanded by the Commons, and is pronounced against him on the 14th.

6. See the proceedings upon Lord Strafford's trial, at length in Rushworth's Collections, Vol. VIII. p. 102, and in the State Trials, Vol. I. p. 715 †.

7. On the 24th of March, 1640, the Lords make an order, "That if any Peer, having any scruple or doubt in him, arising

* See these tenets, and the part which the King, and Bishop Laud, had in the publication of these books, explained in the note †, p. 125, of this Vol.

† The Managers appointed to conduct the impeachment against the Earl of Strafford were, Lord Digby, Mr. Hampden, Mr. Pym, Balstrode Whitlocke, Oliver St. John, Sir Walter Earle, Geoffry Palmer, John Maynard,

and John Glyn, Recorder of London.—"Lord Strafford, (speaking of the Committee who managed the evidence against him, and particularly of the lawyers) said to a private friend, that *Glyn* and *Maynard* used him like advocates, but *Palmer* and *Whitlocke* used him like gentlemen, and yet left out nothing material to be urged against him."

Whitlocke's Memoirs, p. 41.

“ out of the evidence at the trial of the Earl of Strafford, shall stand up and persist to desire to have the House adjourned, whereby he may be satisfied in his conscience of the said doubt, the House is to be adjourned, without giving a reason in Westminster-Hall; but the Peer is to be answerable to this House for the reason of it*.”

8. “ The Managers for the House of Commons proceeded against the Earl of Strafford article by article, till they came to the 20th article; but then, finding the following articles so nearly related to one another, they would tie themselves no more to these rules, but pleaded for liberty to handle them, not as they lay, but as they were related to one another; and after Lord Strafford had long and vigorously opposed this, “ the Lord High Steward determined the “ safe, and ordered ” that they should be handled promiscuously, and in cumulo, as the Managers for the Commons should think fit†.”

* The practice has been conformable to this order ever since, That, at the request of any Lord, the court, without a question, adjourns back to the House of Lords.

† This is Rushworth's account, in Vol. VIII. p. 514 of his Collections.—I do not find any thing mentioned in the Lords Journals, of any objection made by Lord Strafford; nor had the Lord High Steward authority to determine any thing without the direction of the court; the proceeding however on the 5th of April was, (as stated by (Rushworth) on the 20th, 21st, 22d, 23d, and 24th articles taken together. In the history of these proceedings in the 1st volume of the State Trials, p. 726, the following account is given of this matter: “ On Monday Master Whitlocke proceeded to the 20th article, and told him, that, because the matter was intervenient, et consimilis naturæ, they had resolved to join the five

next articles together, because all of them tended to one point or period.” The Lieutenant intreated, that they would proceed according to the orders prescribed by the House, which was, article by article: he said, “ five “ articles were many, the matter weighty, his “ memory treacherous, his judgment weak.” It was bitterly replied by Master Glyn, “ That “ it does not become the prisoner at the Bar “ to prescribe to them in what way they should “ give in their evidence.” The Lieutenant modestly answered “ That if he stood in his “ place, he would perhaps crave the like “ favour; unless his abilities did furnish him “ with more strength than he could find in “ himself; for his part he was contented, “ they should proceed any way, always provided, they would grant him a competent “ time for replying.” And so Whitlocke went on.

9. On the 26th of January, 1666, the Managers of the impeachment against the Lord Viscount Mordaunt, for high crimes and misdemeanors, observing, at the trial in the House of Lords, that, after the articles were read, his Lordship did sit in the House as a Judge, and had Counsel at the Bar to make his defence, objected to both these circumstances, “as contrary to former precedents, particularly that of the Earl of Middlesex *, the 21st of Jac. 1st, and “that of Michael de la Pole, in Richard the 2d’s time, who “answered for himself.”—The Lords, upon these objections, order a Committee to search for precedents upon both points.—On the 28th of January, the Committee make their report; upon which the Lords direct, “That the lower Baron’s bench should be removed, and a stool set near the Bar, where the Lord Mordaunt is “to sit uncovered, as a Peer, but not in the capacity of a Judge; and “that he shall be allowed Counsel.”—This order † is communicated to the Managers of the Commons, at the Bar of the House of Lords—who desire leave to acquaint the House of Commons with these resolutions, “because they receive their instructions in this business “from the House of Commons ‡.”—The House of Commons acquiesce in allowing Counsel to Lord Mordaunt, but not in the manner of his sitting within the Bar; and, on the 31st of January,

* See this case of the Earl of Middlesex, before, p. 204.—The Commons had, on the 26th of January, before the Managers went up to the Lords, ordered, that they should proceed there in this business of Lord Mordaunt, according to this precedent of the Lord Cranfield.

† See a similar order made on the 1st of May, 1725, in the instance of the Earl of Macclesfield.

‡ The Commons, upon this report, on the 28th of January, appoint a Committee to consider of the precedents cited by the Lords;

who report, on the 29th, the order, relating to matters of judicature, which the Lords had made on the 28th of May, 1624, and which is entered before in this volume, p. 158; they also report the case of the Earl of Bristol, as cited before, p. 100, and in the note p. 101.—After reading this report, the Commons refuse to acquiesce in the point of the manner of Lord Mordaunt’s being within the Bar; but, upon a division, they do acquiesce with the Lords, in allowing Counsel to be assigned him upon his trial.

order * the Managers to acquaint the Lords with these their resolutions †.—This is communicated to the Lords at their Bar by the Managers, on the 31st of January; when the Lords immediately resolve, “ That, judging it a right inherent in every court, to order and “ direct such circumstances and matter of form, that can have no “ influence to the prejudice of justice, in such way as they shall “ judge fit, where the same are not settled otherwise by any positive “ rule, their Lordships do confirm the order, already made in this “ case, as just and equal, and do wish the Commons to proceed to “ matter of substance.”—The Managers are called in, and acquainted with this resolution of the Lords; who desired leave again to resort to their House for their directions ‡. —The Commons disagree to this determination of the Lords, and demand a Conference to assign their reasons;—this Conference is agreed to by the Lords, and held on the 4th of February §.—The Lords adhere to their former resolutions of the 28th and 31st of January; which, being

* It had been proposed, on the 29th of January, to acquaint the Lords with this determination of the Commons at a Conference, but this was negated on a division.

† The Commons resolve, on the 31st of January, “ That this House do sit whilst the “ Committee of Managers is with the Lords, “ upon the business of the Lord Mordaunt’s “ trial.”—Accordingly, much business appears, from the Journals, to have been done, in the absence of the Managers.—The general practice, however, has been different: and it seems more proper, that, whilst so great a number of Members are, by the commands of the House, performing their duty in another place, and therefore necessarily absent, the House should not permit any business to proceed.—The custom therefore has been, as well upon Conferences as on Impeachments, that the Speaker leaves the chair as soon as the names of the Managers are called over, and they are withdrawn out of the House; and does not resume the chair, till the Managers,

or the Members appointed to manage the Conference, are returned into the House.

‡ The Commons upon this report from their Managers, on the 31st of January, desire a Conference with the Lords, “ upon the matter of the Lord Mordaunt’s sitting within “ the Bar, at the time of his trial, with his hat “ off;” and they also appoint a Committee to search precedents and prepare reasons to be offered at the Conference.—On the 1st of February, Mr. Seymour reports from the Committee two reasons; these are not entered in the Journal of the Commons, but are in the Lords Journal of the 4th of February.

§ It appears from the Lords Journal of the 4th of February, that objections were made to the agreeing to this Conference upon the ground, as is expressed in the protest, “ That “ the conferring with the House of Commons, “ upon a matter only relating to the manner “ of proceeding in judicature, is a great derogation to the privilege of the Lords.”

reported to the Commons at a Conference, they on the 5th of February, demand a Free Conference; which, after long debate, the Lords refuse; and acquaint the Commons, that their Lordships adhere to their former order, and are ready to proceed.—The Commons, on the 6th of February, demand a Conference upon this message of refusal of a Free Conference; which the Lords agree to, and it is held on the 7th of February.—Upon the report of which, the Lords demand a Free Conference, on the subject of this last Conference; in which the Lords justify their proceeding in refusing the Free Conference demanded by the Commons.—The Commons demand another Free Conference *, on this Conference: but the whole of this dispute is put an end to by the King's coming, on the 8th of February, and proroguing the Parliament †.

10. On the 17th of May, 1679, the Lords direct the Committee of Privileges to search for and consider precedents and ways of proceeding on the trials and judicature of Peers; and to advise of directions and methods fit to be observed therein, for the preservation of order and regularity, on the trials of the Lords now appointed; and all circumstances usually occurring on such trials.—On the 22d of May, the report of this Committee is made ‡, and agreed to, and ordered

* Much learning, touching the law of Parliament, in questions of granting or refusing Conferences, particularly in matters of judicature, appearing in this dispute between the two Houses—conducted, as appears, on the part of the Lords, by the Lord Anglesey, and on that of the Commons, by Mr. Seymour, afterwards Sir Edward Seymour, both men well versed in these subjects—the proceedings are extracted from the Lords Journals, where they are entered more at length, and inserted in the Appendix to this Volume, N^o 9.

† Lord Danby, in arguing his own case in the Court of King's Bench, on the 27th of

May, 1682, mentioning this impeachment of Lord Mordaunt, says, "He was impeached upon articles in one session; but having taken out a pardon during the prorogation, was never more called upon, nor never questioned on the former impeachment, although the very same Parliament sat again, which had impeached him."

St. Triak, Vol. II. p. 744.

The same circumstance is mentioned in the Pamphlet referred to before p. 192, intitled "A Treatise of the King's power of granting pardons in cases of Impeachment," p. 10.

‡ See this report at length in the Lords Journal of the 22d of May, and in the Journal of

ordered to be communicated to the Committee of the House of Commons, at the next meeting of the Joint-Committee of both Houses.

11. On the 30th of November, 1680, the trial of Lord Stafford commences in Westminster Hall *.—The Speaker leaves the chair, and the Committee of Managers go;—when they return, the Speaker resumes the chair.

12. On the 2d of December, 1680, the Lords order, That all the Lords do attend this House, during the trial of Lord Stafford, upon the peril of undergoing the censure of this House for their absence.

13. On the 4th of December, 1680, Lord Stafford desired that his Counsel might be heard to the following points of law: (1.) Whether proceedings ought to be continued from Parliament to Parliament upon impeachments? (2.) Whether an impeachment be to be prosecuted in Parliament, without an indictment found by a Grand Jury †?—The Lords, after

of the House of Commons of the 23d of May. The Lords resolve, "That the Commons be acquainted, that this paper contains the orders of the House of Lords *de bene esse*, preparatory to the trials; yet such, that if the Commons have any thing to object to, or to offer to be added to them, the Lords will consider thereof, and do what shall be reasonable." It appears from the report, on the 23d of May, in the House of Lords, of what passed on the communication of this paper, that the Committee of the Commons said, "That they would receive this paper as propositions, but that they did not intend to give any answer to it, till they should have an answer from the Lords to the former

"proposition of the Commons, concerning the right of the Lords Spiritual to sit on these trials."—A similar Committee was appointed on the 23d of November, 1680, which report, on the 26th, rules and directions to be observed on the trial of Lord Stafford.

* See the proceeding at length on this trial, in the State Trials, Vol. III. p. 101, with the speeches of the Managers, &c.—The Commons, on the 2d of December, make an order, That nothing that shall be said by any Member of this House, or by any witness brought to support the prosecution, be printed or published, without leave of the House.

† There were two other questions of law, touching the manner of alleging the overt-act, and

ter consideration, refuse to hear Lord Stafford's Counsel to these points*.

14. On the 6th of December, 1680, the evidence and arguments being closed, it was supposed the Lords would have proceeded that day to give judgment;—but, upon a question put, Whether to adjourn that night to Westminster Hall? the votes were equal, and so it was carried in the negative.—The Lords, taking notice that some Lords were absent this day, who were present all the days of the trial and heard the evidence, order, That particular notice be given presently to the absent Lords, to give their attendance on this House immediately, or else they are to be sent to the Tower †.—On the 7th, the Lords are called over by a ‡ list, to know who are absent, that were present at the hearing of all the evidence; and all the Lords in the list were present, excepting the Earl of Dorset and the Lord Coventry who had been excused §.

and the evidence. Upon these, the Lords took the opinion of the Judges, which the Judges delivered publicly in Westminster Hall, on the 4th of December, in the presence of Lord Stafford.

* See the speeches of Sir William Jones, and Sir Francis Winnington, upon these points;—Sir Francis Winnington says, “This is the cause of the Commons of England, who only change their representatives in a new Parliament.”

† Lord Dorset, and Lord Coventry, were excused upon oath made at the Bar by their physicians, that from illness they could not attend.

‡ In the list of the Lords present at this time, and during the trial, the name of the Duke of Cumberland (who was Prince Rupert,

son of the Queen of Bohemia, and grandson of James the 1st.) had precedence to that of the Lord High Steward: and it appears from the State Trials, Vol. III. p. 102, that in the procession, on the first day of the trial, from the House of Lords to Westminster Hall, Prince Rupert (stated to be a *Prince of the Blood*) walked after the Lord High Steward; and from p. 212, that, in taking the votes of Guilty or Not guilty, the Duke of Cumberland gave his vote after the Lord High Steward.

§ See in the Lords Journal of the 7th of December, the proceedings of the Lords, before they gave judgment.—The Lord High Steward, being infirm, has leave to sit, whilst he takes the votes of Guilty or Not guilty.—Lord Stafford pleads in arrest of judgment, but his plea is over-ruled.

VI. *Commons demand Judgment.*

1. **O**N the 26th of March, 1621—the Lords are ready to give judgment against Sir Giles Mompesson, “if the Commons, with their Speaker, will, according to the antient custom of Parliament,” come and demand it*.—The Speaker, with all the House, went up and demanded judgment accordingly.

2. On the 3d of May, 1621, the Lords are ready to give sentence against the late Lord Chancellor Bacon, if this House, by their Speaker, will come up and demand judgment †.—So, on the 4th of May,

* See the debate upon this question, in the Commons Journal.—And, in the Lords Journal of the 26th of March, see the form of the proceeding at full length; and the Judgment itself; to which, though very severe, King James (as appears from the Lords Journal of the 27th of March) was pleased to add, “that of perpetual banishment out of all his Majesty’s dominions.”—This absurd and illegal proclamation for banishing Sir Giles Mompesson, is to be found in Rymer’s *Fœdera*, Vol. XVII. p. 289.—Illegal it was, because the King had, by law, no authority to issue or enforce it.—Absurd, because, after reciting the punishment adjudged to be inflicted upon him by the Lords, part of which was imprisonment during life, it charges Sir Giles Mompesson, if within the King’s dominions (for he at this time was absconding and concealed) forthwith to depart, and never to return; thereby exhorting him to evade the execution of that part of the sentence.

† See the form of demanding, and the Judgment itself, in the Lords Journals.—Besides *fine* and imprisonment, “Lord Bacon was

“rendered incapable of any office, or place, “or employment in the State or Commonwealth; never to sit in Parliament, or come “within the verge of the Court.”—It is said, in the Life prefixed to his Works, that, about three years after, King James granted a full and entire pardon of his whole sentence; and that Lord Verulam was summoned to the first Parliament of King Charles.—That Parliament met on the 18th of June, 1625, and Lord Bacon died on the 9th of April, 1626.—But if apprehend this last anecdote, of his being again summoned to Parliament, not to be true; because, when the Lords were called over, on the 23d of June, and again on the 15th of February, 1625, it appears from the Lords Journal, that the name of Lord Viscount St. Albans was neither amongst those present nor absent.—See, in Vol. V. of *Parliamentary History*, p. 421, Lord Bacon’s Letter to the King, soliciting his pardon; and the King’s Warrant to the Attorney General to make it out; and Lord Keeper Williams’s reasons for demurring to put the seal to it.—The following account, at the conclusion of the proceedings

May, 1621, against Sir Francis Michell—and, on the 13th of May, 1624, against the Lord Treasurer Middlesex*.

ings against him, in the 1st vol. of the State Trials, is, if true, very extraordinary:—
 “ Though Lord Bacon was afterwards set at
 “ liberty, and had a pension from the King,
 “ he was in great want to the very last, living
 “ obscurely in his chambers at Gray’s Inn;
 “ where his lonely and desolate condition so
 “ wrought upon his melancholy temper, that
 “ he pined away; and, after all his height of
 “ abundance, was reduced to so low an ebb,
 “ as to be denied beer to quench his thirst;
 “ for, having a sickly stomach, and not liking
 “ the beer of the house, he sent now and then
 “ to Sir Fulk Greville, Lord Brook, who
 “ lived in the neighbourhood, for a bottle of
 “ his beer; and, after some grumbling, the
 “ Butler had orders to deny him.” Mallet,
 in his *Life of Lord Bacon*, prefixed to the
 folio edition of his Works, does not confirm
 this account.

* One part of the Judgment against Lord Middlesex, was, “ That he shall never sit in Parliament any more;” as had before been pronounced against Lord Bacon.—Lord Clarendon says, “ A clause of such a nature, as
 “ was never before found in any Judgment
 “ of Parliament; and, in truth, not to be in-
 “ flicted upon any Peer, but by attainder.”
History of the Rebellion, Vol. I. p. 20.—It
 should seem, as if there had been something
 particular in this Judgment, or in the manner
 of delivering it; because the next day, the
 14th of May, a Committee is appointed, by
 the Commons, to search former precedents,
 how Judgments have been given in former
 times by the Lords, upon complaint made by
 the Commons.—It does not appear that this
 Committee made any report.—There is a very
 curious anecdote, upon the subject of the Lord
 Treasurer’s condemnation, told in Ambrose
 Philips’s *Life of Archbishop Williams*, p. 105.
 “ His Majesty, King James the 1st, sent for

“ the Lord Keeper Williams, and told him
 “ plainly, ‘ That he would not have his Treas-
 “ surer a public sacrifice.’—‘ Sir,’ says the
 “ Lord Keeper, ‘ I have attempted amongst
 “ my surest friends, to bring him off fairly;
 “ All shrink and refuse me.—Only the stout
 “ and prudent Lord Holles adventured upon
 “ the frowns of the Prince and Duke, and
 “ gave his reasons, Why Middlesex appeared
 “ to be innocent.—I were mad, if, for my
 “ part, I should not wish him to escape this
 “ tempest, and be safe under the harbour of
 “ your Majesty’s clemency.—When I delibe-
 “ rate upon him, I think of myself—’Tis his
 “ fortune to-day, ’tis mine to-morrow.—The
 “ arrow that hits him, is within an handful of
 “ me. Yet, Sir, I must deal faithfully—Your
 “ Son, the Prince, is the main champion that
 “ encounters the Treasurer; whom, if you
 “ save, you foil your Son—For, though mat-
 “ ters are carried by the whole vote of Par-
 “ liament, and are driven on by the Duke,
 “ yet they that walk in Westminster Hall, call
 “ this, ‘ The Prince’s undertaking;’” whom
 “ you will blast in his bud, in the opinion of
 “ all your subjects, if you suffer not your old,
 “ and, perhaps, innocent servant, to be pluck-
 “ ed from the sanctuary of your mercy—Ne-
 “ cessity must excuse you from inconstancy
 “ or cruelty.’ So, with these reasons, the
 “ King was persuaded to yield to the head-
 “ strong importunities of his Parliament,
 “ and the Treasurer was deposed, and fined
 “ £. 1000, and committed to the Tower.”—
 Within a few months after this conversation,
 the Lord Keeper’s prophecy was fulfilled; for,
 by the influence of the same Duke of Buck-
 ingham, he himself was removed from
 the office of Lord Keeper, and retired from
 Court to his palace at Bugden, in disgrace.
 He was at that time only Bishop of Lincoln.

3. On the 14th of June, 1628, a message is sent to the Commons, That the Lords are ready to proceed to judgment against Dr. Mainwaring, if they, with their Speaker, will come to demand the same.—The Commons return for answer, That they will come presently*.

4. On the 13th of May, 1679, the Lord President reports from the Joint-Committee of both Houses which had been appointed to consider of propositions and circumstances relating to the trial of the Lords in the Tower—That, upon the Lords asserting that Judgment of these matters belong entirely to them, the Commons had acknowledged, “That Judgment after trial is in the Lords; but “their Lordships are not to give Judgment unless the Commons “demand it †.”

5. On the 6th of December, 1680, the Lords send a message to the Commons, That they have appointed Lord Stafford to be brought to the Bar, in Westminster Hall, to-morrow morning, to hear Judgment.—The Commons immediately resolve, *nemine contradicente*, That this House will go, to-morrow morning, with their Speaker, to the Bar of the House of Lords, and demand Judgment ‡ upon the impeachment of the Commons of England against Lord Stafford.—

On

* The form of demanding this Judgment is as follows:

“My Lords,

“The Knights, Citizens, and Burgesses, of
“the Commons House of Parliament, have
“impeached before your Lordships Roger
“Mainwaring, Clerk, Doctor in Divinity, of
“divers enormous crimes; for which your
“Lordships have convented him before you,
“and examined the said offences.—And now
“the Commons have commanded me, their
“Speaker, to demand Judgment against him
“for the same.”—See, in the Journals of the
Lords and Commons, of the 21st of June,

the form of executing that part of the sentence, which required his submission, and acknowledgment of his offences, at the Bar of both Houses.

† See, in p. 192 of this Volume, the manner and form of the Commons demanding Judgment against the Earl of Danby, upon the Commons disallowing the validity of Lord Danby's plea of pardon in bar of the impeachment.

‡ On the 7th of December, before the Speaker leaves the Chair, the Commons resolve, “That the Committee appointed to
“manage the impeachment against Lord
“Stafford

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On the 7th of December, the Speaker went up with the Mace, and demanded Judgment *.

6. On the 25th of March, 1681, the Commons send a message to the Lords, to mind their Lordships, "That the Commons had formerly demanded Judgment by their Speaker, at the Bar of the Lords House, upon their impeachment against Lord Danby †; and therefore to desire their Lordships to appoint a day to give Judgment upon that impeachment."

"Stafford be impowered, in case the House of Lords shall proceed, immediately after the fact found, to give Judgment, to insist upon it, that it is not Parliamentary for their Lordships to give Judgment, until the same be first demanded by this House."—See the debate which preceded this resolution in Grey's Debates, Vol. VIII. p. 109. The question discussed was, Whether the Commons could properly demand Judgment until the Lords had determined the fact, Guilty or Not guilty.—It is said in the 8th volume of Grey's Debates, p. 114, "That the Committee of Commons were present at the court in Westminster Hall, when the Lords found Lord Stafford guilty of the High Treason whereof he stood impeached; and then the whole House went up with the Speaker, to demand Judgment." The several proceedings of this day the 7th of December, viz. (1.) The form of the Lords finding the verdict Guilty or Not guilty; (2.) What Lord Stafford urges in arrest of Judgment.—(3.) The form of the Commons demanding judgment—and (4.) The judgment pronounced by the Lord High Steward, are to be found in the State Trials, Vol. III. p. 211. et subf.

* When Judgment was actually pronounced, on the 7th of December, the Committee of Managers of the impeachment were present in the court of Westminster Hall.—On the 4th of June, 1685, after the accession of James the 1st, a Bill passed the Lords, for reversing the Attainder of Lord Stafford, which, however, never passed the House of Com-

mons; probably for the reasons, which are very well expressed in a protest, signed by Lord Anglesey, on the 3d of June—against the Bill being ingrossed.

† On the 24th of March, 1680, on the meeting of the new Parliament at Oxford, Lord Danby, who had been committed by the Lords, on the 16th of April, 1679, upon the impeachment against him by the Commons in the former Parliament, petitions to be bailed.—The debate upon the prayer of this petition is put off till the 28th, when the Parliament is dissolved.—This Parliament sat but for a week, from Monday the 21st to Monday the 28th of March.—See Bishop Burnet's account of the manner in which the King dissolved this Parliament (History, Vol. I. p. 499). Afterwards, in the year 1684, Lord Danby and the Popish Lords were bailed by Jefferyes, then Chief Justice of the Court of King's Bench.—Burnet says, "It was certainly a great hardship Lord Danby lay under: for he had been now five years in the Tower—Three Parliaments had sat; the two last had not mentioned him; and now a Parliament seemed out of sight—Yet though he offered a very long and learned argument for their bailing him, the Judges of the King's Bench, even Saunders himself, were afraid to meddle in it.—But Jefferyes was bolder—So he bailed him."—History, Vol. I. p. 591.—See these arguments of Lord Danby at large, in the State Trials, Vol. II. p. 739—and 750—with what was said by the Court on that occasion.

VII. *Bills of Attainder.*

1. **O**N the 1st of February, 1605, a Bill was brought in at the Lords, for the Attainder of divers offenders in the late most detestable and damnable treasons.—This Bill was read 2° on the 3d of February, and committed, with directions to the Attorney General to prepare the evidence against the parties attainted.—On the 25th of March, 1606, this Bill was laid aside, and a new Bill was presented, read 2° on the 26th, with the like directions to the Attorney General.—On the 1st of April, the Bill was ordered to be ingrossed; and was read 3° on the 3d of April, and sent to the Commons by the Chief Baron, attended by six messengers, Judges and others, and specially recommended, for the weight, for expedition.—It appears, from the Commons Journal, that notwithstanding this recommendation, and the atrociousness of the offence charged, there was a debate, even upon the first reading of the Bill, on the 4th of April. It was not read 2° till the 10th; when, after debate in what manner and by whom the evidence should be produced, it was ordered that it should be by Mr. Attorney, at the Bar, and not by Mr. Solicitor and Sir Francis Bacon, they being Members of the House.—On the 29th of April, the Attorney General produces the evidence.—On the 30th Counsel are heard for some of the parties attainted, and the Bill is committed.—On the 8th of May, the Bill is reported, with amendments; but before the amendments are agreed to, the Commons desire a Conference with the Lords about them.—This is agreed to by the Lords, but it does not appear, from the Journal of either House, what passed there.—The Bill, with the amend-

ments and proviso, passed the Commons on the 12th of May, and were agreed to by the Lords on the 13th*.

2. On the 10th of April, 1641, the Bill of Attainder of the Earl of Strafford for high treason is read 1^o in the House of Commons †.—On the 14th, it is read 2^o, and committed for the same day, post meridiem, when the Committee sat, and also on the 15th, and subsequent days ‡.—The Bill was reported on the 21st of April

* See this act in the Statutes at Large, 3d Jac. II, ch. 2.—The trials of the several persons concerned in this (commonly called, The Gunpowder Treason) plot, before Commissioners appointed for that purpose, are in the State Trials, Vol. I. p. 224, et subf.

† See what is said before in note †, p. 165. upon the subject of the intention of the enemies of the Earl of Strafford having been, from the commencement of the prosecution against him, to proceed by Bill.—Both houses having been present in Westminster Hall whilst the evidence was given upon the trial by impeachment, made it, in their opinion, unnecessary to hear the evidence again in either House.—In the Journal of the Commons of the 10th of April, and in Lord Clarendon's History of the Rebellion, Vol. I. p. 179; there is a very curious account of the production, in the House of Commons, by Sir H. Vane the younger, of the copy of his father's Minutes of Council, with respect to bringing over the army from Ireland—upon which minutes the Bill was immediately ordered in.—These minutes, as appears from Whitlocke's Memoirs, p. 41, were read, upon the 13th of April, in Westminster Hall, in the presence of Lord Strafford, and of both Houses.—See these papers at length in Whitlocke, with Lord Strafford's answers to them.—All proceedings relating to this Bill of Attainder are reversed, and ordered to be erased from the Journal of the House of Lords, by the directions of an

Act, passed in the 13th and 14th of Charles II, ch. 29th.—On the 4th of July, 1698, the Lords appoint a Committee to inspect their Journals in the year 1640 and 1641, relating to the vacating and obliterating divers proceedings therein, pursuant to the Act of the 14th Charles II. "For reversing the Earl of Strafford's Attainder," and the several Orders of the House pursuant thereto.—This Committee reports on the 5th of July, "That, upon the perusal of the Journals, it plainly appears, that, by the former Orders made by this House, relating to the cancelling and obliterating the proceedings against the Earl of Strafford, it could not be intended, that any other proceedings should be obliterated, than those relating specially to the Act of Attainder.—It is therefore ordered and declared by the Lords, That whatsoever stands crossed upon the Journals, relating to the proceedings on the impeachment of the said Earl, ought not, nor shall, be looked on as obliterated—and that the several Orders, for obliterating and vacating any proceedings concerning the Earl of Strafford, must be taken to have been intended as to what related to the Act of Attainder only." Which report being read, was agreed to by the House.

‡ Whilst this Bill was in its progress, the Commons, upon the 16th of April, resolve, "That it is sufficiently proved, that Thomas Earl of Strafford hath endeavoured to sub-

"vert

April *, and passed the House of Commons, on that day †, on a division of 204 to 59 ‡.

3. On

“vert the ancient and fundamental laws of these realms of England and Ireland, and to introduce an arbitrary and tyrannical government, against law.” And on the 19th, “That the endeavour of Thomas Earl of Strafford to subvert the ancient and fundamental laws of the realms of England and Ireland, and to introduce an arbitrary and tyrannical government, against law, in both these kingdoms, is High Treason.” Though in the life of Selden in the Biogr. Britan. it is said, “That he joined with the most violent in prosecuting the Earl of Strafford and Archbishop Laud,” yet from the account in the State Trials, it appears, that Mr. Selden opposed this resolution in the House of Commons; and his name is accordingly inserted in the list of *Straffordians* which was posted up in Old Palace Yard, on the 3d of May.

* On this day, the 21st of April, Lord Digby, who had been one of the Managers on the trial of the Impeachment, made a speech against the Bill of Attainder, in which was the following passage, “Truly, Mr. Speaker, I am still the same in my opinions and affections, towards the Earl of Strafford; as I confidently believe him the most dangerous minister, the most insupportable to free subjects, that can be characterized. I believe his practices in themselves have been as high, as tyrannical, as any subject ever ventured on; and the malignity of them are highly aggravated by those rare abilities of his, whereof God hath given him the use, but the Devil the application.—In a word, I believe him still that grand apostate to the Commonwealth, who must not expect to be pardoned in this world, till he be dispatched to the other.—And yet, let me tell you, Mr. Speaker, my hand must not be to that dispatch; I protest, as my con-

science stands informed, I had rather it were off.” *Rushworth's Coll. Vol. VIII. p. 50.*

† On the 23d of April, whilst this Bill was pending in the House of Lords, the King wrote the following letter:

“Strafford,

“The misfortune that is fallen upon you, by the strange mistaking and conjuncture of these times, being such, that I must lay by the thoughts of employing you hereafter in my affairs; yet I cannot satisfy myself, in honour or conscience, without assuring you now, in the midst of your troubles, that, upon the word of a King, you shall not suffer in life, honour, or fortune: This is but justice, and therefore a very mean reward from a master, to so faithful and able a servant as you have shewed yourself to be; yet it is as much, as I conceive the present times will permit: though none shall hinder me from being,

“Your constant faithful friend,

“CHARLES R.

“Whitehall, April 23d,
1641.”

See this letter in the *Strafford State-Papers*, Vol. II. p. 416—with the Lord Strafford's letter to his Son, the day before his execution—and some notes of the Lord Primate Usher, of what the King, on the 11th of May, wished the Archbishop to say from his Majesty.—In *Carte's History of England*. Vol. IV. p. 350, is a particular account of what was urged to the King, by several Bishops, particularly Archbishop Williams, to satisfy the King's conscience, that he might give the royal assent to the Bill.—Lord Strafford was executed on the 12th of May.

‡ In the Act of Attainder (which as a private Act, is not printed in the Statutes at Large, but which is to be found in *Rushworth's*

Collections, Vol. VIII. p. 756) the offences charged against him are recited in the preamble; "All which offences," the Act says, "have been sufficiently proved against the said Earl upon his impeachment."—There is a clause in this Act, which, as it has often been made the subject of discussion, and the source of much mistake, it may be proper here to take notice of:—It is as follows, "Provided that no Judge or Judges, Justice or Justices, whatsoever, shall adjudge or interpret any act or thing to be treason, nor hear or determine any treason, in any other manner than he or they should or ought to have done before the making of this Act—and as if this Act had never been had or made."—By those, who wish to represent this proceeding against Lord Strafford, by Bill of Attainder, as illegal, this proviso has been cited to prove, that the same Parliament, which passed the Bill, admitted that the proceeding was so arbitrary, that they thought it necessary to enact, "That it should never be used as a precedent."—But I apprehend, that this is not the true construction of this clause. —The intention of inserting it was, to obviate a misconstruction of that clause of the statute of 25th Edward III. stat. 5, ch. 2, which, after declaring what offences shall be deemed to constitute acts of High Treason, enacts, "And, because that many other like cases of treason may happen in time to come, which a man cannot think nor declare at this present time; it is accorded, That if any other case, supposed treason, which is not above specified, doth happen before any Justices, the Justices shall tarry, without any going to judgment of the treason, till the cause be shewed and declared before the King and his Parliament, whether it ought to be judged treason, or other felony."—The clause in this Act of Attainder, therefore, means only to declare, That though, in the judgment of Parliament, these offences charged against the Earl of Strafford were by them adjudged to amount to the crime of High Treason, yet that this judgment should not

authorize the Judges of the realm hereafter, to adjudge or interpret any similar act to be High Treason; but that if such a case should occur, they should, in obedience to the statute 25th of Edward III. "tarry," and not form any judgment upon the authority of what had been done upon this occasion.—There is a similar clause in the Rolls of Parliament, in the 11th year of Richard II, which, after confirming and establishing several accusations and judgments that had been held, concludes, "Et comment q̄ diverse pointz sont declarez pur trefon, en cest present Parlement, autres q̄ ne furent declarez par estatut devant, que null Justice ait poair de rendre juggement d'autre cas de trefon, n'en autre manere, qu'ils n'avoient devant le commencement de cest present Parlement." Rot. Parl. Vol. III. p. 250, N° 38.—Sir M. Hale, therefore, in his Plac. Cor. Vol. I. Chap. 24, p. 269, speaking of the Act of Lord Strafford's Attainder, very properly observes, "That this clause seems a cautious, but a very needless proviso; because this Bill of Attainder was a particular judgment, that did not egredi personam, and no general declarative law to serve the statute of 25th of Edward III."—That this is the true construction of this clause is confirmed by what Serjeant Maynard says: "I myself drew this proviso; that the judgment upon Lord Strafford should not be drawn into example; else," says he, "liberty had been given to the Judges to have judged treason accumulative—and therefore this should not be drawn into example, but the Judges should hold to the statute of 25th Edward III."—See also, the speeches of Mr. Solicitor General Winnington, Mr. Finch, and Mr. Powle, in the same debate, and Sir Harbottle Grimstone's construction upon the clause of the 25th Edward III.—Grey's Debates, Vol. VI. p. 379—386.—The Act, 13 and 14 Charles II. Ch. 29, which reverses the Earl of Strafford's attainder, alleges several grounds,—(1.) "That he was condemned upon accumulative treason, none of the pretended crimes being

3. On the 15th of May, 1660 *, it is resolved, that John Bradshaw, Oliver Cromwell, Henry Ireton, and Thomas Pride, all deceased, shall, by Act of Parliament, be attainted of treason, for the murder of the late King.—The Bill is presented on the 7th of November †.—On the 9th of November, petitions are presented from persons interested in the estates of the offenders, and referred to the Committee on the Bill, with instructions to hear the parties, and examine the cases—And the Committee is to examine ancient precedents of proceedings in cases of Attainder.—On the 17th, the Chairman reports the evidence given against the respective persons in the said Bill.—The Bill is re-committed, and reported on the 4th of December ‡, and passed the House of Commons on the

being treason apart—(2.) That he was judged guilty of constructive treason—(3.) That this Bill was violently forced through both Houses, by mobs of armed and tumultuous persons—(4.) That when the King signed the commission for giving the Royal assent to the Bill, “ he did it with exceeding great sorrow, and “ it was ever remembered by him with inexpressible grief of heart; and out of his Majesty’s great piety, he did publicly express “ it, when his own sacred life was taken away “ by the most detestable traitors that ever “ were.” For all which causes, the Act of Attainder is repealed, revoked, and reversed.” —See in the 10th Vol of Grey’s Debates, p. 206, a debate in the year 1691, in which Mr. Solicitor General Somers says, “ The “ power of impeachment ought to be, like “ Goliath’s sword, kept in the Temple, and “ ought not to be used but on great occasions. “ —The security of your constitution is lost, “ when you lose this power.—The stat. of “ 25 Edward III. did foresee, that men would “ be above the law; and, I believe, did not “ take away those, that were traitors at “ the common law. —Seductio Regis can

“ be punished no otherwise than in Parliament.”

* This proceeding was in the Convention Parliament, which met on the 25th of April—and arose out of a debate upon a Bill then pending, “ for general pardon, indemnity, “ and oblivion;” which Bill was in consequence of Charles II.’s declaration at Breda, “ That he would grant a free and general “ pardon, under the Great Seal, to all his “ subjects, who, within 40 days, should lay “ hold upon this his grace and favour; excepting only such persons, as shall hereafter “ be excepted by Parliament.”

† The Bill is read a first and second time on the 7th of November, the day it is presented, on the suggestion of Prynne, “ because “ the traitors heretofore read their Act for “ the trial of the King twice together.”—Parliamentary History, Vol. XXIII. p. 7.

‡ See, in the Parliamentary History, Vol. XXIII, p. 37 and 42, the debate upon this report, with the several expedients proposed for the relief of the creditors, and of the persons in possession of the estates of the persons attainted.

7th of December; on the 14th was agreed to by the Lords; and on the 29th of December received the Royal Assent*.

4. On the 26th of October, 1665, a Bill is read 1^o in the House of Commons for attainting Thomas Dolman, and others, of High Treason, if they do not come in and render themselves by a day.—It passed—and received the Royal Assent on the 31st of October†.

* See this Act in the Statutes at Large, 14th of Charles II. ch. 30, with the names of all the persons attainted; of whom, several were dead, others had been executed, others fled from justice; with the provisions relative to their estates. Not content with attainting these persons, the Commons, on the 4th of December, 1660, resolve, “That the *carcasses* of Oliver Cromwell, Henry Ireton, John Bradshaw, and Thomas Pride, whether buried in Westminster Abbey or elsewhere, be, with all expedition, taken up and drawn upon a hurdle to Tyburn, and there hanged up in their coffins, for some time, and after that buried under the gallows.—And that the Serjeant at Arms attending this House, do take care that this Order, be put into effectual execution.” The Lords concur with the Commons in this resolution, with this addition, “And the Dean of Westminster is desired to give directions to his officers of the Abbey to be assistant in the execution of this Order;” to which, on the 8th of December, the Commons agree.

†. It does not appear from the Journal of the House of Commons, what the treason was, that Dolman and his accomplices were accused of. There is no examination of witnesses, or any information given to the House on this subject; but the Bill was ordered in upon motion. I can find nothing relating to this mat-

ter in any history of these times. But on referring to the Act itself (which is preserved in the Parliament Office) the preamble states, “Whereas it is notoriously known, that Thomas Dolman and the others therein named, contrary to the duty of their allegiance, have most traiterously and wickedly adhered and still do adhere to his Majesty’s enemies beyond seas, where they still remain, and commit divers treasonable acts, without any sense of loyalty to his Majesty, or of natural affection to their native country: May it please your Majesty, that it may be enacted, &c. &c.” There is then a clause enacting, “That all and every person, who now are or hereafter shall be beyond the seas, and whom his Majesty by any royal proclamation under the Great Seal to be issued, during the continuance of this war with the States of the United Provinces, shall name and require to return into England and surrender themselves, and who shall not return and render themselves accordingly, shall stand and be attainted of High Treason.” There is another clause, “to attain of High Treason all and every of his Majesty’s subjects, who from and after the 1st day of February, 1666, shall, during the continuance of the war, serve the States of the United Provinces either by land or sea, as a soldier or seaman.”

5. On the 16th of November, 1678, the Lords order the Attorney General to prepare a Bill, requiring certain persons * therein named to render themselves to justice, and in default thereof, to attain them of High treason.—This Bill passed the House of Lords, and was read 1^o in the House of Commons on the 23d of November, and then dropped.

6. On the 25th of March, 1679 †, the Commons, having some time before impeached Lord Danby, and desired that he be committed ; and the Lords having sent a message to the Commons to acquaint them “ That Lord Danby was not to be found,” immediately ordered in a Bill “ to summon Lord Danby to render himself to justice by a day certain, or in default thereof to attain him.”—This Bill passes the Commons on the 1st of April.—The Lords, on the 2d of April, resolve to amend the Bill, by leaving out the Attainder ; and on the 4th of April communicate these amendments to the Commons ‡ at a Conference, with their reasons.—On the 7th of April, the Commons disagree to these amendments ; and communicate their reasons for this disagreement on the 8th.—On the same day, the Lords adhere to their alterations.—On the 9th of April, the Commons persist in refusing to agree to these amendments of the Lords ; and desire a Free Conference.—On the 10th

* The marginal note in the Lords Journal, calls this, “ Bill of Attainder against *Conyers*, “ and others.”—It appears from Burnet’s History, Vol. I. p. 424, that Tonge had informed against one Conyers, a Benedictine, and had charged him with providing himself with a poniard, with which he undertook to kill the King.

† See, in Grey’s Debates, Vol. VII. p. 51 to 105, the debates which arose on all these proceedings.—The reasons urged on both sides are in the Lords Journals.

‡ This proceeding of the Lords, of com-

municating their reasons, together with their amendments, at a Conference, was irregular. The amendments should have been sent down with the Bill by message—and the reasons for making the alterations should have been kept back, till their Lordships knew whether the Commons made any objection to those amendments.—The effect of the alterations made by the Lords, was, to change it from a Bill of “ Attainder,” into a Bill for “ Banishment.”—See the debate upon this question, in Grey’s Debates, Vol. VII. p. 85 and 92.

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and 12th of April, several Free Conferences.* are held; in consequence of which the Lords, on the 14th of April, agree with the Commons to the Bill of Attainder, if Lord Danby does not surrender by a certain day, the 21st of April †.

7. On Saturday the 13th of June, 1685, upon a message from the King, acquainting the Commons, that the Duke of Monmouth was landed at Lyme in a hostile manner, with men and arms—they immediately order in a Bill for attainting him of High Treason.—This Bill was presented on Monday the 15th of June, and read three times in the House of Commons, and passed; and sent to the Lords; and was read three times in the House of Lords, on the same day, the 15th of June ‡.—The Royal Assent was given on the 16th §.

* See, in the Journals of the House of Commons of the 12th of April, Sir Francis Winington's report of what passed at the Free Conference on this subject.

† On the 14th of April, the Lords acquaint the King, by message, that the Bill had passed both Houses; and that his Majesty, in regard of the shortness of the time allowed for Lord Danby's surrender, would be pleased to appoint a short time, that the Bill may be tendered for his Royal Assent.—The King sends for answer, That he will come on the 16th. On the 15th, at night, Lord Danby surrenders to the Gentleman Usher of the Black Rod.—See Bishop Burnet's account of this business in Vol. I. p. 453.—On the 16th of April, 1679, Lord Danby is committed, by the Lords, to the Tower.—On the 24th of March, 1680-1, near two years after, he petitions the Lords that he may be bailed—but the King coming on the 28th, and dissolving the Parliament, no proceeding is had upon this petition. He

continued prisoner in the Tower till the year 1684, when he was bailed by Lord Chief Justice Jefferyes.

‡ It appears from the Journal, that the King was himself present in the House of Lords on the 15th.—Bishop Burnet says, "Some small opposition was made by Lord Anglesey, because the evidence did not seem clear enough, for so severe a sentence, which was grounded on the notoriety of the thing." History, Vol. I. p. 641.

§ In the year 1743, a Bill passed for restoring the Duke of Buccleugh (the lineal descendant from the Duke of Monmouth) to his English titles of Earl of Doncaster and Baron Scot of Tynedale. The Scotch titles of Duke of Buccleugh and Earl of Dalkeith, which came from the Lady, whom the Duke of Monmouth married, were not affected by the Bill of Attainder passed in the Parliament of England.

VIII. *Bills of Pains and Penalties.*

1. **O**N the 2d of May, 1610, Sir Stephen Proctor being charged with several misdemeanors*, is ordered into the custody of the Serjeant; and on the 9th of May, being brought to the Bar, he is committed to the Tower—And on the 15th of May, a Bill is ordered in against him; this Bill is presented on the 6th of June.—On the 12th Sir Stephen Proctor petitions.—On the 15th, the Bill is committed.—On the 22d of June, he again petitions for Counsel to be allowed him; and it is resolved, not to allow him Counsel to be heard for his offence, or regarding the judgment, but to permit it respecting the state of his lands and creditors.—On the 26th of June, the Bill is reported, and passed the Commons on the 3d of July †.

2. On

* See Carte's History of England, Vol. III. p. 799.—It is said, that Sir Stephen Proctor was one of the chief officers for executing the penal laws: and that, being charged by Sir J. Mallory, a Member of the House, with corruption in the execution of his office, and with throwing aspersions on himself, a motion was made for committing him to the Serjeant.

† Upon the second reading of this Bill in the House of Lords, on the 14th of July, Sir Stephen Proctor petitions, complaining of the refusal of the Commons to hear him, in answer to, or defence of any misdemeanors supposed to be committed by him.—And, “forasmuch as by the justice of the realm, which belongeth to every subject, as part of his birthright, few or none have been condemned or punished in so high a nature, upon naked relations, without oath, legal

trial, or hearing of the defendant to plead and prove for himself, in lawful and just defence, what he may; he desires to be heard by himself or Counsel, to speak to the points of the Bill wherewith he is charged.”—The Lords admit him to be heard, as well in person as by Counsel, on the 17th of July, and in the mean time the prosecutors against him to have thereof knowledge.—On the 17th he is heard; Sir John Mallory, and divers other persons, being present, to speak and allege against him; and the Bill is committed, for the better examination of parties on both sides.—On the 19th of July, the Archbishop of York reports from the Committee, “That, having examined the Bill, in presence of Sir Stephen Proctor, and his Counsel, and of certain his Accusers, and their Counsel, the Committee could not find that Sir Stephen Proctor, or his deputies, could be charged in

2. On the 26th of May, 1641, it appearing from the report of a Committee, that Mr. Alderman Abel, and Mr. Kelvert, had been the principal projectors, both in the creation and execution of an illegal imposition of 40 s. per tun, upon wine;—resolved, That there shall be a Bill prepared, declaring the offences of Alderman Abel, and Richard Kelvert, to the end they may be made exemplary.—On the 19th of August, Mr. Glyn is ordered to present the Bill; and on the 26th of August, it is to be read the next day.—But I find nothing further done in it*.

3. On the 1st of July, 1661, the House hear evidence, produced by the Attorney General, against several persons who were concerned in the death of Charles the First, as his Judges; and who were excepted out of the act of indemnity, and reserved for such pains, penalties, and forfeitures, not extending to life, as by any other Act should be imposed upon them.—The evidence being closed, and Counsel withdrawn, it was resolved, *nemine contradicente*, “ That a Bill be brought in for a confiscation of the estates of the persons deceased, and also of those who are living †; with a further

“ in any sort to have abused or misdeameaned themselves, in the execution of the commission wherein he was employed; and that therefore their opinion was, the Bill should rest, and proceed no further.”—The Lords, however, generally yielding due respect to the proceedings of the Lords Committees, yet, considering how great care is to be had for punishment and reformation of crimes, tending to the prejudice of the commonwealth and government—and, as the Lower House have passed a Bill so severe against the said Sir Stephen Proctor, to the judgment of which House their Lordships have great respect—they therefore desire a Conference with the Commons touching the said Bill.—On the 23d of July this Conference is reported in the House

of Lords, That the Commons desire, either that the Bill against Sir Stephen Proctor may pass, or that he may be specially excepted in the Bill of pardon.—The Lords adopt the latter expedient: and it is agreed, “ That Mr. Attorney shall, with the pardon, attend his Majesty; that, by his Highness’s commandment, and in his Majesty’s presence, a clause may be inserted for excepting the said Sir Stephen.”

* On the 9th of April, 1642, it is resolved, “ That the submission of Alderman Abel, and the £. 2000 which he offereth, shall be accepted.”

† Sir Henry Mildmay, and Robert Wallop, were, whilst the evidence was produced, present in custody at the Bar of the House.

pain against those who are in custody, and others who shall hereafter be apprehended *."

4. On the 4th of July, 1661, a bill is ordered, for executing certain persons attainted of High Treason, for the murder of King Charles the 1st.—It is read 1^o, on the 22d of November, and ordered to be read 2^o on the 25th, and that those who are prisoners in the Tower should appear, and offer what they can for themselves. Several of the persons named in the bill, being in custody of the Lieutenant of the Tower, were brought to the Bar by the Serjeant, and heard † on the 25th of November.—On the 26th, after much debate, and a division, the Bill is committed ‡.

5. On

* The further pain was, That Lord Viscount Monson, Sir Henry Mildmay, Sir James Harrington, Robert Wallop, and John Phelps, should be imprisoned during their life.—And that Lord Monson, Sir Henry Mildmay, and Sir James Harrington, should be degraded from their honours and titles :—and that all the said persons, now alive, should be drawn from the Tower upon hurdles, through the streets, to and under the gallows at Tyburn, with ropes about their necks, and so back to the Tower, there to remain during their lives.—On the 11th of July, the Attorney General produces evidence against Sir A. Haslerig, and his name is ordered to be inserted in the Bill.—The Bill passed the House of Commons on the 19th of July.—On the 25th of July, on the second reading of the Bill, the Lords hear Lord Monson, and Sir Henry Mildmay, at the Bar, and receive a petition from Mr. Wallop, who was prevented from attending by illness.—See this Act in the Statutes at Large, 13 Charles the 1st. ch. 15.—This Sir James Harrington mentioned here, was not the Author of the *Oceana* and several other political treatises: but this Gentleman was also arrested about this time by orders of Government, in 1661,

and was committed to the Tower. He was confined afterwards in St. Nicholas's Island, near Plymouth. It does not appear, that any regular charge was ever made against him. His persecutions and cruel treatment in these confinements brought on diseases, which occasioned his death in 1677. Biogr. Brit.—See in the 3d Volume of this Work, in the note, p. 34, the suspicion on which he was, with several other persons, taken up. The examination of Harrington on that occasion in the Tower, by Lord Lauderdale, is very curious; and is preserved in a Book, intitled, *British Biography*, Vol. V. p. 399.

† They severally alleged, "That, upon his Majesty's declaration from Breda, and the votes of this House, and the King's proclamation of the 6th of June, they did render themselves; being advised, that they should thereby secure their lives."

‡ The names of several persons are left out of the Bill, on the third reading, upon the 27th of January, "for that they have not yet been heard before this House." But a new Bill is immediately ordered to be brought in for their execution.—On the 5th of February, the Lords make an order for bringing to their

5. On the 5th of December, 1667, a Bill for banishing and disabling the Earl of Clarendon, is read 1^o in the House of Lords.—On the passing of this Bill by the Lords, on the 12th of December, several Lords protest, and enter their reasons.—The Bill was agreed to by the Commons, with amendments, on the 18th of December; and on the 19th received the royal assent*.

6. On the 10th of January, 1670, after examining into the assault that had been made on Sir John Coventry †, a Member of the

Bar the persons named, “to be heard what they can say concerning the Bill.”—They are accordingly brought on the 7th of February, and severally heard—why the Bill should not pass.—See, in the Lords Journal, their several allegations.—Harry Martin says, “That honourable House of Commons, that he did heretofore so idolize, had given him up to death; and now this honourable House of Peers, which he had so much opposed, especially in their power of judicature, is now made the sanctuary for him to fly for life.” Bishop Burnet gives this man the following character: “One person escaped, as was reported, merely by his vices: Henry Martin, who had been a most violent enemy to Monarchy. But all that he moved for, was upon Greek or Roman principles. He never entered into matters of religion, but on design to laugh, both at them and all morality; for he was both an impious and a vicious man. And now in his imprisonment, he delivered himself up to vice and blasphemy.—It was said, That this helped him to so many friends, that upon that very account he was spared.”—History, Vol. I. p. 162.—It does not appear that this Bill ever passed into a law.—See the trial of 29 regicides at the Old Bailey, for High Treason, in the State Trials, Vol. II. p. 298.

* See this Act in the Statutes at Large, 19th of Charles the II^d, Ch. 10.—It appears

from Grey’s Debates, Vol. I. p. 64, that much opposition was given to this Bill in the House of Commons, upon the principle of the cruelty of condemning any person, however guilty, without hearing him.—Immediately, therefore, after reading the Bill the first time, they resolve to address the King to issue a proclamation for summoning the said Earl to appear by a day certain, and for apprehending him in order to his trial. The concurrence of the Lords being desired to this resolution, they disagree to it;—and assign their reasons on the 14th of December; which reasons, on the 16th of December, the Commons declare not to be satisfactory;—and, on the 18th, they make several amendments to the Bill, to which the Lords agree.—See Lord Clarendon’s account of this proceeding against him, in the Continuation of his Life, p. 466.

† The narrative of the circumstances attending this extraordinary transaction is given in all the histories of these times, particularly by Bishop Burnet, in Vol. I. p. 269, 270.—See also the debate in Grey’s Debates, Vol. I. p. 333, et subseq.—The House of Commons resented this attack upon their privileges so warmly, that they resolve, “That no other business be proceeded in, whilst the Bill is passing this House.” And accordingly no other business is done, from Tuesday to Saturday, whilst this Bill is pending.—The Lords made several amendments to the Bill, particularly

the House, the House order in a Bill for fixing a day, to such persons as were actors in that fact, to come in and render themselves to justice, or to be banished *.—This Bill passes the House of Commons on the 14th of January, and the Lords on the 24th †.

7. On the 9th of March, 1670, the Lords having received the report from a Committee, appointed to enquire into the late barbarous assaulting, wounding, and robbing the person of the Lord Steward of his Majesty's Household ‡, order in a Bill concerning such persons as appear to be probably guilty of that assault.

8. The Commons having brought up an impeachment against the Lord Treasurer Danby, and having prayed that he be committed—the King, on the 22d of March, 1678, made a speech from the throne to both Houses, to acquaint them §, that he had granted

larly as to the day on which the parties were to surrender.—The Commons had fixed a particular day—the Lords altered that day to "within 25 days from the day that his Majesty's royal assent to this Act shall be entered and appear of record in the Journal of the House of Peers."—This brought on several Conferences and Free Conferences.—The Act however passed, and is in the Statutes at Large, 22d and 23d of Charles the II^d, ch. 1.—See in Grey's Debates, Vol. I. p. 368, the debate upon the amendment made by the Lords, as to the day (upon which the Bill was to commence) being computed from the time of recording the royal assent.

* There was a general clause inserted in this Bill, making it for the future felony to lie in wait, and cutting off or disabling any limb, "with an intent to maim or disfigure." Stat. 22 and 23 Charles II. ch. 1. sect. 7th.—In the year 1721, two persons, Woodburn and Coke, were tried upon this Act at the assizes at Bury, for disfiguring Edward Crispe; Coke, on being asked, What he had to say in his defence,

said, "My intention was to kill Mr. Crispe, "and not to maim or disfigure him;" and then argued, That therefore, in point of law, he could not be convicted on an indictment grounded upon this Statute. They were however both convicted and executed.

State Trials, Vol. VI. p. 219—223.

† The Lords examine the witnesses, to prove the allegations of the preamble to this Bill, not at the second reading of the Bill, but in the Committee, on the 18th of January.

‡ This was the attempt, made by Blood and others, on the person of the Duke of Ormond.—See the account of this in Hume's History of Charles the II^d's reign, ch. 3. and the behaviour of the Lord Ossory, the Duke of Ormond's son, towards the Duke of Buckingham, who was suspected to be the adviser of this attempt.

§ See this speech in Grey's Debates, Vol. VII. p. 19, and the debate upon it in the House of Commons. There is an extract from it before in the note *, p. 183, of this Volume.

his pardon to Lord Danby under the Great Seal.—The Lords immediately order a Bill to be brought in, “for rendering Lord Danby “incapable of coming into his Majesty’s presence, and of all offices “and employments, and of receiving any grants from the Crown, “and of sitting in the House of Peers.”—On the 25th of March, the Bill is committed *.—And in the Committee, on the 26th, it is altered, and changed into a Bill of banishment †; and that same day passed and sent to the Commons.—It is read 1^o in the House of Commons, on the 27th of March, 1679, and immediately rejected ‡.

* Lord Anglesey dissents to the question of commitment, “because the party is not summoned, which by the essential forms of justice ought to be,” and for other reasons.—On the 26th of March, the Lords, on a question being put, “Whether to proceed further “in this Bill without summoning the party “concerned,” resolve in the affirmative.

‡ This alteration in the Bill was in conse-

quence of an order made by the Lords, on the 24th of March, for taking Lord Danby into the custody of the Black Rod, and a report from the Black Rod, on the 25th, That Lord Danby had withdrawn himself, and was not to be found.

† See the debate in Grey’s Debates, Vol. VII. p. 61.

I M P E A C H M E N T.

CHAPTER THE THIRD;

From the Revolution to the Year 1780.

- I. *What are sufficient Grounds of Accusation.*
 - II. *Proceedings in the House of Commons previous to carrying up the Charge.*
 - III. *Form of delivering the Charge.*
 - IV. *Proceedings in either House between the Delivery of the Charge and the Trial.*
 - V. *Proceedings on the Trial.*
 - VI. *Commons demand Judgment.*
 - VII. *Bills of Attainder.*
 - VIII. *Bills of Pains and Penalties.*
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In this, as in the preceding chapter of this Title, the commencement of the Proceeding being sometimes under the first and sometimes under the second head—the following is a table of references to the pages, where the Cases are inserted.

PROCEEDINGS AGAINST PERSONS IMPEACHED OR CHARGED.

1. Sir Adam Blair, Elliot, and others, 1689, of High Treason—
p. 233.

2. Burton

2. Burton and Graham, 1689, of high crimes and misdemeanors—p. 233.
3. Earls of Salisbury and Peterborough, 1689, of high treason—p. 234.
4. Earl of Castelmaine and others, 1689, of high treason—p. 240.
5. Lord Coningsby and Sir Charles Porter, 1693, of high treason and other crimes and misdemeanors—p. 241.
6. Duke of Leeds, 1695, of high crimes and misdemeanors—p. 234.
7. Lord Belhaven and others, 1695, of high crimes and misdemeanors—p. 235.
8. Goudet and others, 1698, of high crimes and misdemeanors—p. 236.
9. Earl Portland, Lord Somers, &c. 1701, of high crimes and misdemeanors—p. 236.
10. Dr. Sacheverel, 1709, of high crimes and misdemeanors—p. 237.
11. Earls of Oxford and Bolingbroke, 1715, of high treason and other high crimes and misdemeanors—p. 237.
12. Earl of Strafford, 1715, of high crimes and misdemeanors—p. 238.
13. Duke of Ormond, 1715, of high treason and other high crimes and misdemeanors—p. 237.
14. Earls of Derwentwater, &c. 1715, of high treason—p. 238.
15. Earl of Macclesfield, 1724, of high crimes and misdemeanors—p. 238.
16. Lord Lovat, 1746, of high treason—p. 239.

I. *What are sufficient Grounds of Accusation.*

1. **O**N the 13th of June, 1689, the House being informed, that Sir Adam Blair, Captain Vaughan, Captain Mole, Doctor Elliot, Dr. Grey, and several other persons, had dispersed a seditious and treasonable * paper, printed, and intitled, “ A Declaration of King James the Second ;” and the said paper being read at the table ; Resolved, That Blair, Vaughan, Mole, Elliot, and Grey, be impeached of “ High Treason,” for dispersing the said paper.— And a Committee is appointed to prepare the impeachment, with power to send for persons, papers, and records.

2. A report having been made to the House, on the 23d of May, 1689, from a Committee, of several misdemeanors committed by Burton and Graham, in expending public money in the prosecution of law-suits, in the Reigns of Charles II. and James II. a Committee is appointed, on the 24th of October, to examine what precedents there are in the Journals of commitments by the authority of the House,—This Committee report on the 25th of October † ; and the House being informed that several of the prisoners in the Tower are now bailing in the Court of King’s Bench, the House order the Governor of the Tower immediately to bring the prisoners to the House.—Burton and Graham being accordingly brought, the report of the 23d of May was read to them ; and being heard, they were committed to the custody of the Serjeant

* See in Grey’s Debates, Vol. IX. p. 302, 356, and 365, the debates upon this subject ; particularly the speech of Mr. Hawles, p. 305,

upon the construction of the statute of treasons, the 25th Edw: III.

† See this report in the Journal.

for several high crimes and misdemeanors objected against them; and a Committee was appointed to examine witnesses, and to prepare a charge against them *.

3. On the 26th of October, 1689, the House resolve, That an impeachment of High Treason be sent to the Lords against the Earl of Salisbury and Earl of Peterborough †, “for departing “from their allegiance, and being reconciled to the church of “Rome ‡;” and that Mr. Foley do go to the Lords, and, at their Bar, in the name of the Commons, impeach the said Lords, and acquaint the Lords, that the Commons will send “further” articles against them in convenient time, and do desire they may be committed.—The Lords immediately order them to be committed to the Tower §.

4. On the 27th of April, 1695, the House having read a re-

* I do not find that this Committee made any report.

† This was Henry Earl of Peterborough, uncle to Charles Earl of Monmouth, to whom (on Henry's dying in 1697, without issue male) the title of Peterborough descended.

‡ This offence was constituted treason by the stat. 23d Eliz. Ch. 1. sect. 2. and by 3d Jam. I. Ch. 4. sect. 23.

§ On the 2d of October, 1690, these two Lords present petitions to the House of Lords, stating the length of time they have been imprisoned, “notwithstanding a dissolution, and “several prorogations of Parliament have intervened, as also an Act of Free and General Pardon;” (the Parliament had been dissolved the 6th of February, and a new Parliament met the 20th of March, 1689); and praying to be discharged.—The Judges are ordered to attend, to give their opinion, “Whether the Earls of Peterborough and “Salisbury are pardoned by the Act of General Pardon.”—On the 6th of October,

the Judges give their opinion, “That if their “crimes were committed before the 13th of “February, 1688, and not in Ireland, nor “beyond the seas, they are pardoned by the “said Act.”—Then the question being put, Whether these Lords shall be discharged of their imprisonment?—it was resolved in the negative; and they were both ordered to be admitted to bail.—But on the 30th of October, 1690, they were discharged.—See some very judicious observations on this case, in a pamphlet, printed in 1791, intitled “A Review of the Arguments in favour of the “Continuance of Impeachments notwithstanding a Dissolution,” p. 49 to 60.—Mr. Justice Foster very properly observes, “That, “this being a case of Impeachment, it may “be doubtful, whether the Lords did right “in discharging the parties accused, without “giving the Commons an opportunity of “being heard.”

Foster's Cr. Law, p. 151.

port from a Joint-Committee of both Houses relating to the distribution of money by the East India Company—resolve, “ That there doth appear to this House, upon the said report, that there is sufficient matter to impeach the Duke of Leeds of high crimes and misdemeanors *.”—They then resolve, “ That Thomas Duke of Leeds, President of his Majesty’s Most Honourable Privy Council, be impeached of high crimes and misdemeanors;” Mr. Comptroller is ordered to go up to the Lords, and, at their Bar, impeach the Duke of Leeds of high crimes and misdemeanors †.

5. Upon reading a report from a Committee, appointed to examine what methods were taken to obtain an Act of Parliament, passed in Scotland, for establishing an East India Company, and who were the subscribers, promoters, and advisers thereof, the House, on the 21st of January, 1695, resolve, “ That the Directors of the said Company administering, and taking here, in this kingdom, an oath, *de fidei*, is a high crime and misdemeanor.” And also, “ That the Directors of the said Company, under colour of a Scotch Act of Parliament, styling themselves a Company, and acting as such, and raising monies in this kingdom for carrying on the said Company, are guilty of a high crime and misdemeanor.”—They then resolve, “ That the Lord Belhaven, and several other persons, be impeached of the said high crimes and misdemeanors.”—And a Committee is appointed to prepare im-

* This is the third time that articles of impeachment had been exhibited in the House of Commons against the Duke of Leeds.—The first were in 1675, upon which, the House resolved, “ That there was not sufficient matter contained in them to impeach the Lord Treasurer.”—See before p. 140.—The next were in 1678, upon which Lord Danby was impeached, to which impeachment he

pleaded the King’s pardon.—See before, p. 115.

† Before the message is carried up, the House being informed, that the Duke of Leeds was at the door, and desired to be heard—he is admitted and heard—“ the Mace being all the while on the table.” And being withdrawn, Mr. Comptroller went up with the message.

peachments against the said persons, which Committee hath power to send for persons, papers, and records*.

6. On the 16th of April, 1698, a report is made from a Committee appointed to consider of a petition of the Royal Lustring Company, in which it appeared, that several persons had been concerned in smuggling over French silks.—On the 20th of April, the House take the said report into consideration, and immediately resolve, “That Goudet, Barreau, and several other persons, who “ appeared to be concerned in the said illicit trade, be impeached of “ high crimes and misdemeanors †.

7. On the 1st of April, 1701, Colonel Granville reports from a Committee on the State of the Nation, “That it is the opinion of “ the Committee, That William Earl of Portland, by negotiating “ and concluding the Treaty of Partition, which was destructive to “ the trade of this kingdom, and dangerous to the peace of Europe, “ is guilty of an high crime and misdemeanor.”—This resolution was agreed to by the House; and they then resolve, “That William “ Earl of Portland be impeached of high crimes and misdemeanors.”—Sir John Leveson Gower is ordered to go up to the Lords with the impeachment.—The same proceeding is had on the 14th of April, against Lord Somers, the Earl of Orford, and Charles Lord Halifax, for advising the said Treaty of Partition ‡.

8. On

* It does not appear that this Committee ever make any report of the articles of impeachment, or that the persons are impeached at the Bar of the Lords.—On the 29th of January, it being reported from this Committee, “That Roderick Mackenzie had endeavoured to suppress the evidence he had “ given against the said persons voted to be “ impeached,” he is ordered into the custody of the Serjeant; but not being to be found, the House, on the 8th of February, address

the King to issue a proclamation for apprehending him.

† The persons impeached, are immediately ordered by the Commons, to be taken into the custody of the Serjeant.—And the Attorney General is ordered to prosecute several other persons, for similar offences.—On the 27th of May, two other persons are impeached upon the same grounds.

‡ See these proceedings in the State Trials, Vol. V. p. 339.—On the 16th of April, the day

8. On the 13th of December, 1709, a complaint is made in the House of Commons of two sermons preached by Dr. Sacheverel *. He is ordered to attend on the 14th, at the Bar, when he confesses the preaching, printing, and publishing the sermons.—Being withdrawn, a question is proposed, “ That the said Doctor Henry Sacheverel be impeached of high crimes and misdemeanors.”—He is again called in, and heard what he had to offer to the House; and being withdrawn, the House resolve, (1) “ That he be impeached of high crimes and misdemeanors :” and, (2) That “ Mr. Dolben do go to the Lords, and, at their Bar, impeach the said Doctor Henry Sacheverel of high crimes and misdemeanors, and acquaint the Lords, that this House will, in due time, exhibit articles against the said Doctor Sacheverel.”—And a Committee is appointed to draw up the articles of impeachment †.

9. On the 10th of June, 1715, immediately after reading the report from the Committee of Secrecy, the House resolve, “ to impeach Henry Viscount Bolingbroke, and Robert Earl of Oxford, of High Treason and other high crimes and misdemeanors ‡.”—And it is referred to the Committee of Secrecy to draw up the

day after the impeachments against these Lords are delivered at the Bar of the House of Lords, the Lords resolve, “ That an address be presented to his Majesty, that he would be pleased not to pass any censure or punishment against these four noble Lords, until the Impeachment depending against them shall be tried.” Lord Romney reports on the 17th, that he had delivered the address. The Lords immediately appoint a Committee to search the Journals, “ Whether, upon any address from this House to the King, there hath been no answer returned ?”—I don’t find, that this Committee make any report.

* Several paragraphs being read, the House resolve, “ That the said sermons are malicious,

“ scandalous, and seditious libels, highly reflecting on her Majesty, the late happy revolution, and the Protestant succession, and upon both Houses of Parliament, and tending to alienate the affections of her Majesty’s subjects.”

† Dr. Sacheverel is then ordered to be taken into the custody of the Serjeant at Arms attending this House.

‡ On the 21st of June, 1715, the Commons also resolve to impeach James Duke of Ormond, of High Treason, and other high crimes and misdemeanors.—See the further proceedings on the 5th, 6th, 8th, and 10th of August.

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articles of impeachment, and prepare the evidence against these two Lords *.

10. On the 22d of June, 1715, the House of Commons, on further consideration of the report from the Committee of Secrecy, resolve to impeach the Earl of Strafford of high crimes and misdemeanors, and refer it to the same Committee to draw up articles and prepare evidence against him.

11. On the 9th of January, 1715, the House of Commons resolve to impeach the Earl of Derwentwater, the Earl of Winton, and several other Scotch Lords, of High Treason †.

12. On the 9th of February, 1724, the King sends a message to both Houses of Parliament, "That his Majesty, having reason
" to apprehend that the suitors of the Court of Chancery were in
" danger of losing money ‡, from the insufficiency of some of the
" Masters, had ordered an enquiry to be made; the result of which
" enquiry, in several reports, he had directed to be laid before Par-
" liament."—The said papers were read in the House of Commons; and, on the 12th of February, they resolve, "That Thomas

* On the 30th of July, 1715, the Commons, in pursuance of the power they had reserved of exhibiting further articles against Lord Oxford, do agree to several other articles of high crimes and misdemeanors, which are ordered to be carried to the Lords on the 2d of August, with a clause, saving liberty to the Commons, still to exhibit further articles against the Earl of Oxford.

† These Lords had been engaged in the rebellion; but it does not appear that the Commons had before them any papers or evidence of the facts, or any other ground for their proceeding than common fame.

‡ This subject had been brought before the

House of Commons on the 23d of January preceding, by a petition from Lord Oxford and Lord Morpeth, Guardians and Committees of the person and estate of a lunatic, complaining, "That upon examining into the
" accounts of the Masters in Chancery, con-
" siderable deficiencies appeared."—A motion being made, "That the officers of the
" Court of Chancery do lay before the House,
" copies of the orders of the Court and of the
" accounts of the Masters;" and a debate arising upon this question, this debate is adjourned till the 9th of February, on which day the Commons receive his Majesty's message.

" Earl

“ Earl of Macclesfield be impeached of high crimes and misdemeanors.”—Sir George Oxenden is ordered to go up with the impeachment *, and then a Committee is appointed to draw up the articles †.

13. On the 11th of December, 1746, Mr. Chancellor of the Exchequer, by the King's command, communicates to the House a letter, signed “ Lovat,” relating to the Pretender and the late Rebellion.—The letter is read, and some persons called in and examined, to prove the hand-writing.—And then the House immediately resolve to impeach Simon Lord Lovat of High Treason.

* The Commons immediately order in a Bill for indemnifying the Masters in Chancery from the penalties of the Act of the 5th and 6th of Edw. VI. ch. 16, “ Against buying “ and selling of offices,” upon discovering what consideration they paid for their respective offices.—This Bill was passed through both Houses with uncommon expedition, and received the Royal Assent on the 17th of February.

† This Committee, upon application to the House on the 24th of February, are empowered to examine the witnesses in the most solemn manner.—See, upon this subject, what is said in the 2d Volume of this Work, p. 150, under title, “ Whether the House of Commons can “ administer an Oath.”

II. *Proceedings in the House of Commons previous to carrying up the Charge.*

1. **O**N the 24th of June, 1689, the Attorney General reports the articles of impeachment of High Treason against Blair, Vaughan, and others, for dispersing a treasonable paper *.—They were read, agreed to, and ordered to be ingrossed.

2. On the 26th of October, 1689, the House being informed that the Earl of Castelmaine, Sir Edward Hales, Charles Hales, Esquire, and Obadiah Walker, prisoners in the Tower †, were brought to the King's Bench by the Governor of the Tower, by writs of habeas corpus, in order to their bailing; Ordered, That a warrant be sent to the Governor of the Tower immediately, to bring the said persons before this House, to answer such matters as shall be charged against them.—They are severally brought to the Bar, on the 26th and 28th of October, and, being heard, are charged in the Tower, by warrant from this House, for High Treason, in being reconciled to the church of Rome, and other high crimes and misdemeanors ‡.

3. On

* Sir George Treby was at this time Attorney General, and Sir John Somers Solicitor General; Sir William Williams, Mr. Hawles, Sir Thomas Littleton, were also of the Committee appointed to draw up these articles; but it does not appear, that any of them doubted, "Whether the House of Commons were competent to impeach a Commander of High Treason?"

† It appears from the Journal of the 25th of October, that they had before been com-

mitted to the Tower for High Treason, in being reconciled to the see of Rome.

‡ In the warrant for charging Lord Castelmaine, these words are ordered to be inserted, "in endeavouring to reconcile this kingdom to the see of Rome."—See the proceedings at large, with Lord Castelmaine's answer at the Bar of the House of Commons, in the State Trials, Vol. IV. p. 393. These crimes were declared to be High Treason by the Statutes of the 23d of Queen Elizabeth, ch. 1,

3. On the 16th of December, 1693, the Earl of Bellamont * presents to the House articles of impeachment of High Treason, and other crimes and misdemeanors, against Thomas Lord Coningsby, and Sir Charles Porter, two of the late Lords Justices in Ireland.—The said articles were delivered in and read at the table: The House proceeded immediately, and afterwards on the 22d of December, and several subsequent days, to the hearing of witnesses to prove the said articles.—The examination of evidence being finished, Lord Coningsby and Sir Charles Porter were on the 20th of January, severally heard thereupon in their places; and being withdrawn †, the House resolve to proceed in the consideration of the said articles, article by article.—And on the 29th of January, the House consider them article by article, and upon several of them resolve, “ That there does not appear to “ the House sufficient matter to ground an impeachment upon.” Upon some of the articles, the House resolve, “ That the proceed- “ ings of Lord Coningsby and Sir Charles Porter, mentioned in “ the said articles, were illegal and arbitrary; but that, considering “ the state of affairs in Ireland at that time, the House doth not “ think fit to ground an impeachment thereupon.” And then Lord Coningsby and Sir Charles Porter are ordered to take their places in the House.

ch. 1. sect. 2. and of the 3d of James I. ch. 4. sect. 23. which Acts, as far as they relate to these offences, are still in force. The Parliament was dissolved on the 6th of February, 1689; on the 10th of February, Lord Castelmaine was brought up by a writ of habeas corpus, and bailed by the court of King’s Bench, no objection being made by the Attorney General.

* So on the 4th of April, 1786, Mr. Burke, in his place, presents to the House several articles of charge of high crimes and misdemeanors against Warren Hastings, Esq.—And on

the 12th of December, 1787, Sir Gilbert Elliot, charges Sir Elijah Impey with sundry high crimes and misdemeanors, and presents articles of the said charge, to the House.—See the further proceedings on this charge against Sir Elijah Impey on the 17th of December, 1787, and 4th and 7th February, 1788.

† An order is made, when the debate of the articles is adjourned to another day, That the Members accused shall take their places in the House, until the adjourned debate is resumed.

4. When the impeachment is voted against Doctor Sacheverel, on the 14th of December, 1709*, he is immediately ordered into the custody of the Serjeant†; and on the 15th, Mr. Dolben, who is ordered to go up with the impeachment, is directed to acquaint the Lords, "That Dr. Sacheverel is in custody of the Serjeant, ready to be delivered to the Gentleman Usher of the Black Rod, when the Lords shall please to give orders therein." Mr. Dolben, the same day, reports, That he had executed the orders of the House.

5. The House of Commons having, on the 10th of June, 1715, resolved to impeach Lord Oxford, and Lord Bolingbroke, of High Treason, and other high crimes and misdemeanors, appoint a Committee to draw up the articles.—These articles, against Lord Oxford, are reported by Mr. Walpole, on the 7th of July, and read.—On the 8th of July, they are read a second time, article by article, and amended, and severally voted to be the articles of impeachment.—On the 9th of July, when ingrossed, they are read a third time, and ordered to be carried to the Lords‡.

6. On the 15th of June, 1715, the Committee of Secrecy applied for leave to examine the persons, taken into custody, in the most solemn manner, according to former precedents.—The House of

* See in the Appendix to the 8th Vol. of State Trials, p. 540, N^o 34, an account of what passed most remarkable, relating to the case of Dr. Sacheverel, in the House of Commons.—The trial at large is in Vol. V. p. 645.

† Mr. Hastings was impeached at the Bar of the House of Lords on the 11th of May, 1787—but was not ordered into the custody of the Serjeant till the 21st, after several of the articles of the impeachment had been carried up to the Lords.

‡ On the 30th of July, 1715, the Commons agree to several other articles of high crimes and misdemeanors against Lord Oxford; which, on the 2d of August, they order to be carried to the Lords.—And they enter a further protestation, saving to themselves a liberty of exhibiting, at any time hereafter, any other accusations or impeachments against the said Earl.

Commons order, " That such Members of the Committee of Secrecy, as are Justices of the Peace for the county of Middlesex, do examine Matthew Prior * and Thomas Harley, now in custody of the Serjeant, touching the matters contained in the several books and papers referred to them †."

7. The House of Commons having, on the 10th of June, 1715, resolved to impeach Lord Bolingbroke of High Treason, and other high crimes and misdemeanors, and having appointed the Committee of Secrecy to draw up the articles, Mr. Walpole, on the 4th of August, reports the articles that had been prepared—These are read twice, and severally agreed to, and ordered to be ingrossed.—On the 6th of August, the ingrossed articles, with the saving clause for liberty to exhibit further articles, are again read, and ordered to be carried to the Lords—with a message, to pray and demand,

* Mr. Walpole, on the 17th of June, acquaints the House, That Matthew Prior having been accordingly examined, there appeared matters of such importance, that the Committee of Secrecy had directed him to move, " That he be confined in close custody, and no person permitted to come to him;" which is ordered accordingly; and that no person be permitted to come to him without leave from Mr. Speaker.—In the *Biographia Britannica*, Vol. V. p. 3445, in a note, there is Prior's own account of this examination before the Committee for above ten hours, and of the manner of his being committed to " close custody."—He had been Minister at Paris from Q. Anne, and had been engaged in negotiations there, after the peace of Utrecht. The part which Prior had in these transactions, appears from the report from the Committee of Secrecy, p. 28 and 29, which was printed by order of the House of Commons.

—On the 27th of August, 1715, Mr. Speaker acquainted the House, that he had received a letter from Mr. Prior, relating to the circumstances of his confinement.—This letter is referred to the Committee appointed to draw up articles of impeachment; and on the 20th of September, Mr. Walpole reports, the state of the proceedings relating to Mr. Prior's examination and " close confinement," which the Committee declare to be " not only agreeable to former precedents upon the like occasions, but necessary and essential to that great duty and privilege of the House of Commons, of redressing grievances and bringing great offenders to justice."

† See what is said (in the 2d Vol. of this Work, under title, " Whether the House of Commons can administer an oath,") respecting this proceeding, of taking examinations by Members, being Justices of the Peace for Middlesex or Westminster.

“ That Lord Bolingbroke be sequestered from Parliament, and
 “ forthwith committed to safe custody.”

8. On the 31st of August, 1715, the articles of impeachment of high crimes and misdemeanors against the Earl of Strafford are reported from the Committee appointed to prepare them, are read twice and agreed to, and ordered to be ingrossed.—On the 1st of September, the ingrossed articles, with the saving clause, are again read, and ordered to be carried to the Lords by Mr. Aislaby.—And the House order, “ That Mr. Aislaby, before he exhibits the said
 “ articles, do impeach the said Earl of Strafford of high crimes and
 “ misdemeanors.”

9. On the 9th of January, 1715, when the votes of impeachment are passed against the Scotch Lords for High Treason, and several Members are ordered to go up to the Lords for that purpose, the House resolve, “ That whereas the said Peers are already
 “ under commitment, this House will therefore not desire the Lords,
 “ that they may be committed to safe custody, “ as hath been
 “ usual in cases of like nature.” The messengers from the Commons report severally, that they had executed the commands of the House; and then the House appoint a Committee to draw up the articles and prepare evidence*.—These articles are immediately reported; read once, and on the second reading amended and agreed to.—They are ingrossed, with a saving clause, and carried up to the Lords †.

10. On the 11th of December, 1746, after the House have resolved to impeach Simon Lord Lovat of High Treason, the House

* On the 10th of January, this Committee have leave to sit *de die in diem*; and have power to send for persons, papers, and records.

† All this proceeding, from the resolu-

tion of impeachment to the delivering the articles to the Lords, was in the course of the same day.—On the 13th of January, these articles are ordered by the House of Commons to be printed.

being informed, That the said Lord Lovat is now a prisoner in the Tower, they resolve, " That, whereas the said Peer is already under
" commitment, this House will therefore not desire the Lords, that
" he may be committed to safe custody, as hath been usual in
" cases of like nature *."

* As soon as the articles are read in the House of Lords, it appears from the Journal, that the Duke of Newcastle in this instance of Lord Lovat, and the Lord Viscount Town-

shend in the preceding case of the Scotch Lords, acquainted the House, " That the im-
" peached Lords were already under commit-
" ment in the Tower of London."

III. *Form of delivering the Charge.*

1. **O**N the 26th of June, 1689, the ingrossed articles of impeachment against Blair, Vaughan, and others, being read, Resolved, That the said impeachment be delivered at the Bar of the House of Lords—And, that Colonel Birch do carry up the said impeachment to the Lords.—When these articles are brought to the Lords, they appoint a Committee, on the 26th of June, to inspect the Journals, What hath been the method and proceedings upon impeachments from the House of Commons.—This Committee report, on the 27th, “ That they do not find any particular account, touching the method of receiving impeachments.—“ They find, sometimes impeachments have been delivered at Conferences, and sometimes with, and sometimes without articles ; —but when they have been delivered at the Bar of the House, “ it hath always been by way of message from the House of Commons ; but it doth not appear, whether the Lords on the Woolfack were fitting whilst the articles were reading ;—nor doth it “ appear, that any difference hath been made, between the receiving “ a message, where an impeachment hath been brought up, and any “ other message.”

2. On the 26th of October, 1689, the Earls of Salisbury and Peterborough are impeached at the Bar of the House of Lords, of High Treason ; and the Lords are informed, That further articles will be exhibited in a convenient time ; and the Commons desire they may be committed. The Lords, accordingly, immediately order them to be committed to the Tower.

3. On

3. On the 27th of April, 1695, the House having resolved to impeach the Duke of Leeds, Mr. Comptroller is ordered to go up to the Lords, and at their Bar, in the name of the House of Commons, and of all the Commons of England, to impeach Thomas Duke of Leeds of high crimes and misdemeanors, and to acquaint the Lords, That this House will in due time exhibit particular articles against him, and make good the same.

4. On the 20th of April, 1698, the House having resolved, "That Goudet, and others, concerned in an illicit importation of French silks, be impeached of high crimes and misdemeanors," Sir Rowland Gwynn is ordered to go up to the Lords, and at their Bar, in the name of all the Commons of England, to impeach Goudet, and the rest, of high crimes and misdemeanors; and acquaint the Lords, that this House will, in due time, exhibit articles against the said persons*.

5. On the 1st of April, 1701, Sir John Leveson Gower is ordered to go up to the Lords, and at their Bar, in the name of the House of Commons, and of all the Commons of England, to impeach William Earl of Portland of high crimes and misdemeanors; and acquaint the Lords, That this House will, in due time, exhibit particular articles against him, and make good the same.—A Committee is then appointed to draw up the articles.—On the 14th of April, impeachments are voted, and ordered to be carried up to the Bar of the Lords, against Lord Somers—the Earl of Orford—and Charles Lord Halifax, on the same charge of advising the Treaty of Partition†.—And on the 15th of April, the former Com-

* This message was not carried up to the Lords till the 10th of May.

† Mr. Harcourt carries up the message for impeaching Lord Somers; Colonel Byerly, that against Lord Orford; and a Mr. Bruges, against Lord Halifax. See in a subsequent

part of this Volume, in a note, under title, "Proceedings on the Trial," No 3, Lord Hardwicke's observations on the policy of the Treaty of Partition. See also Bishop Burnet's account of these transactions, History of his Own Times Vol. II. p. 264.

mittee are directed to draw up the articles against these Lords.—And on the 2d of May, this Committee are empowered to send for persons, papers, and records.

6. On the 15th of December, 1709, Mr. Dolben delivers at the Bar of the House of Lords, the charge of impeachment against Doctor Sacheverel; and that the Commons will, in due time, exhibit particular articles, and make good the same.—He also acquaints the Lords, “ That Doctor Sacheverel is in custody of the “ Serjeant at Arms, ready to be delivered to the Gentleman Usher “ of the Black Rod, when the Lords shall please to give order “ therein.”

7. On the 9th of July, 1715, Lord Coningsby is ordered to carry to the Lords, the articles of impeachment agreed upon against Lord Oxford *; and directed, before he exhibits the said articles, to im-
peach

* This impeachment was for High Treason, and other high crimes and misdemeanors.—The 11th and 12th were the articles which contained the accusation of treason.—It was proposed in the Lords, on the 9th of July, as soon as the articles had been read, “ That it “ should be proposed to the Judges, as a ques- “ tion of law, Whether these articles con- “ tained in them treason, by the laws of “ Great Britain?” but it was resolved in the negative.—Then Lord Oxford was heard, and withdrew; and the 11th article being again read—it was resolved, “ That Lord Oxford, “ being impeached by the Commons of High “ Treason, specified in certain articles, and “ of other high crimes and misdemeanors, be “ committed to the Black Rod.” The Tower of London was proposed, but changed to the Black Rod, in regard to Lord Oxford’s state of health.—But on the 12th of July, he is committed to the Tower.—It was much debated, even in the House of Commons, Whether

the charges in this 11th article amounted to the crime of High Treason. Sir Joseph Jekyll, though one of the Committee of Secrecy appointed to prepare the articles, was of opinion, “ That it did not amount to High “ Treason,”—The substance of this article was, “ That the Earl of Oxford did, during “ the war, falsely, maliciously, wickedly, and “ traitorously counsel and advise the French “ King, in what manner Tournay might be “ gained from the States General; contrary “ to the duty of his allegiance, and the laws “ and statutes of this realm.” On a division for leaving out the words “ and traitor- “ ously,” it was carried by 247 to 131, that those words should stand part of the article. Lord Oxford, in his answer to this 11th article, denies, That he ever did advise the giving up Tournay to the French King; but adds, “ That during the negotiations of the “ late peace, he was one of the Privy Council; “ and that whatever Counsel he gave, he gave
“ &

peach the said Earl, and to pray and demand, "That the said Earl may be sequestered from Parliament, and forthwith committed to safe custody."—To which request the Lords, on the 11th of July, answer, "That they had ordered the Black Rod to attach him, and he is now in safe custody."

8. On delivering the further articles of impeachment for high crimes and misdemeanors against Lord Oxford, Lord Coningsby is directed, on the 2d of August, 1715, to acquaint the Lords, "That the Commons having received further information of divers other high crimes and misdemeanors, committed by Robert Earl of Oxford, have exhibited further articles of impeachment *."

9. On the 6th of August, 1715, Mr. Walpole, at the Bar of the Lords, impeaches Lord Bolingbroke of High Treason, and other high crimes and misdemeanors; and, in the name of the House of Commons, prays and demands, "That he be sequestered from Parliament, and forthwith committed to safe custody."—He then also delivers in a copy of the articles.—These articles are read, and the Lords immediately resolve †, "That, Lord Bolingbroke being impeached by the Commons of High Treason, and other high crimes and misdemeanors; and certain articles, specifying the said High Treason, and other high crimes and misdemeanors, being exhibited against him; he be forthwith attached by the Gentleman Usher of the Black Rod, and brought to the Bar to answer to the said articles ‡."—And a message is sent to the Commons to acquaint them with this.

10. On

"it as a Privy Counsellor and no otherwise;
"and doth insist, That for any Privy Counsellor or Minister of State, during negotiations for peace, to advise or negotiate concerning the giving up any town, on the conclusion of peace, as part of the terms and conditions of such peace, is not High Treason, by any law of the realm."

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* At the end of these additional articles, there is a clause inserted, saving a liberty to the Commons, of exhibiting, at any time hereafter, any other accusations or impeachments against the said Earl.

† See similar proceedings against the Duke of Ormond, on the 8th of August, 1715.

‡ The Gentleman Usher acquaints the
K k Lords,

10. On the 1st of September, 1715, Mr. Aislachie, at the Bar of the House of Lords, impeached the Earl of Strafford, in the name of the Commons, of high crimes and misdemeanors, and delivered in the articles that had been prepared.—These articles were read, and Lord Strafford was heard in his place, and desired a copy of the articles; which is granted to him.

11. On the 9th of January, 1715, the Scotch Lords are severally impeached at the Bar of the Lords for High Treason; and very soon after, in the course of the same day, the articles of impeachment are exhibited against them by the Commons, which are read; and then the Lord Viscount Townshend acquaints the House, “That the said several Lords impeached are already under commitment in the Tower.”—The Lords are ordered to be brought to the Bar, the next day, to hear the articles read.

12. On the 13th of February, 1724, Sir George Oxenden, at the Bar of the Lords, in the name of the House of Commons, and of all the Commons of Great Britain, impeached Thomas Earl of Macclesfield of high crimes and misdemeanors, and acquainted the Lords, “That the House of Commons would, in due time, exhibit particular articles against him, and make good the same *.”

13. On the 11th of December, 1746, Sir William Yonge brought up a message to the Lords, as follows: “My Lords, The Commons of Great Britain, in Parliament assembled, having received infor-

Lords, on the 9th of August, “That he had made diligent search and enquiry after the said Lord Bolingbroke, but that he was not to be found.”—The Lords order a message to be sent to the House of Commons, to acquaint them with the above-mentioned return of the said Gentleman Usher.—On the 10th

of August there is a similar proceeding against the Duke of Ormond.

* Upon this message, the Lords appoint a Committee to inspect their Journals, in relation to their proceedings on impeachments for high crimes and misdemeanors.—They report on the 8th of April, 1725.

“mation

“ mation of divers treasons committed by a Peer of this realm,
“ Simon Lord Lovat, have commanded me to impeach the said
“ Simon Lord Lovat of High Treason.—And I do here, in their
“ names, and in the names of all the Commons of Great Britain,
“ impeach the said Simon Lord Lovat of High Treason.—And I am
“ further commanded to acquaint your Lordships, that they will,
“ with all convenient speed, exhibit articles to make good the
“ charge against him.”

IV. *Proceedings in either House between the Delivery of the Charge and the Trial.*

1. **O**N the 29th of June, 1689, when the articles of impeachment for "High Treason" against Blair, Vaughan, and others, are taken into consideration by the Lords, they appoint a Committee to inspect the Journals, as to precedents of impeachments, and the grounds and reasons of those precedents.—On the 2d of July, the Earl of Rochester reports * what precedents the Committee had found in the Journals, and amongst the records in the Tower.—After considering this report, and much debate, the question being put, "Whether this House will proceed upon the "impeachment brought from the House of Commons against these "persons?" it was resolved in the affirmative.—The persons impeached are then all ordered to be brought to the Bar, in safe custody, by the keeper of Newgate, or such of them as are in his custody, on the 4th of July, to hear the articles read.—On the 4th of July, some of them are brought; the articles are read; they are allowed copies and counsel; and then are ordered to stand committed to Newgate, in order to their trials.—On the 12th of July they put in their answers in person at the Bar, which are brought to the Commons on the 13th and 23d of July †.

* It should seem, as if the Committee, that was appointed, considered their search for precedents to be confined to instances of impeachments of *Commoners*; because the precedents, which they report, are all cases of *Commoners*, except that of Archbishop Laud.—See

this report in the Appendix to this Volume, No 10; with the proceedings of the Lords thereupon.

† I do not find that the Commons ever made any replication to these answers.

2. On the 31st of March, 1696, in a subsequent Parliament *, Sir Adam Blair petitions the Lords that he may be bailed.—The consideration of this petition is referred to the Committee of Privileges.—On the 5th of April, the question being put, “Whether Sir Adam Blair shall be admitted to bail?” it was resolved † in the affirmative; and ordered, that on Wednesday next the House will take into consideration “Whether impeachments continue from Parliament to Parliament ‡?”

3. On the 6th of October, 1690, the Lords appoint a Committee to inspect and consider precedents, “Whether impeachments continue in *statu quo* from Parliament to Parliament §.”—On the

* The parliament in which Sir A. Blair and the others were impeached, had been dissolved on the 6th of February, 1689.—The next Parliament met on the 20th of March following.

† He is bailed on the 7th of April, and the condition of the recognizance is, “That if he shall appear before the House, at all times when he shall be so ordered, then the recognizance to be void.”—On the 8th and 9th of April, similar recognizances are taken from the other persons impeached.

‡ The consideration of this question was put off from time to time, and then dropped, and nothing further done upon it in the course of this session.—In the next session, on the 2d and 5th of December, 1690, Blair and the others, upon their petition, are discharged from their bail.

§ The same question was raised, just a century after, on the 9th of December, 1790, in the case of the impeachment of Warren Hastings, Esq; but very few persons were found, in either House of Parliament, to maintain, “That the act of the Crown in dissolving the Parliament could, by law, put an end to a criminal prosecution, instituted by the House of Commons on the part of the people.” Whoever will consult the report of precedents,

made to the Lords from a Committee appointed for that purpose (and which was ordered to be printed on the 19th of April, 1791,) and will read the printed debates in both Houses, on that question, will be convinced, that the arguments, on which the decision was founded, “That impeachments do continue in *statu quo* from Parliament to Parliament,” and which produced so large a majority both in the Lords and Commons, were drawn from what had been the ancient course and methods of Parliament in former instances of impeachment; and that this practice, in cases of impeachment, was analogous and conformable to the invariable course of precedents in all other judicial proceedings, before the House of Lords, even from the very earliest times.—See several of these precedents in the note †, in p. 74 of this volume.—A very judicious and clear argument upon this subject was printed in 1791, intitled, “A Review of the Arguments in favour of the Continuance of Impeachments notwithstanding a Dissolution,” by a Barrister; supposed to be written by the Hon. Spencer Percival. The numbers on the division on this question in the House of Commons were 143 to 30; and in the House of Lords 69 to 20.

30th of October, they report several precedents, concerning impeachments, from the Rolls of Parliament; “and that they had examined the Journals of this House, which reach from the 12th of Henry VII. and all the precedents of impeachment since that time; among all which none are found to continue from one Parliament to another, * except the Lords, who were lately so long in the Tower.” And they then state the dates of the proceedings against Lord Stafford.

4. On the 30th of October, 1690, the Lords, after considering the precedents that had been reported from the Committee, appointed to consider, “Whether impeachments continue *in statu quo* from Parliament to Parliament,” discharge the Earls of Salisbury and Peterborough from their bail †.

5. On the 27th of April, 1695, as soon as the message was sent to impeach the Duke of Leeds at the Bar of the House of Lords, a Committee is appointed to withdraw into the Speaker’s Chamber, and to prepare articles of impeachment.—On the 29th, this Committee have power to send for persons, papers, and records.—On the same day the articles are reported, read a second time, and agreed to; are ingrossed, read a third time and carried up to the Lords.—On the 30th of April, the Lords send down the Duke’s answer; and the Committee before appointed are ordered to prepare a replication.—On the 1st of May the same Committee are directed to consider what is the proper method to compel witnesses to come in, and give their evidence upon trials of impeachments.—On the 2d of May, the

* This observation of the Committee, as it was unnecessary, so it was not accurate—as it appears before, p. 199—that Sir W. Scroggs had been impeached in one Parliament, and that he delivered in his answer in a subsequent Parliament, with a petition, desiring a speedy trial, which petition and answer are sent down to the Commons.

† See the protest against this proceeding—and see also the petitions of the Lords Salisbury and Peterborough, presented to the House of Lords on the 5th of October, and the questions put to the Judges on the 6th of October, when the two Lords were ordered to be bailed.

Committee report, " That the proper method to compel witnesses " to come in and give their evidence upon impeachments is, in the " first place, to issue out summons from this House to such witnesses " for their attendance ;" and to this resolution the House agree.— Mr. Robart, a material witness, being ordered to attend, but not being to be found, the Commons, on the 3d of May, acquaint the Lords, at a conference, of this circumstance, and that this hath been the reason* why the Commons have not yet acquainted their Lordships when they can be ready to make good the impeachment.—The Lords, upon this information, address the King, " That he will be pleased to order the ports to be stopped, and " issue his proclamation for securing the person of Mr. Robart."

6. On the 29th of April, 1695, when the articles of impeachment are brought up to the Lords against the Duke of Leeds, he is allowed a copy of the articles, and also of the reports made by the Joint-Committee of both Houses, out of which the impeachment arose †. The Lords, at the same time, appoint a Committee to inspect the Journals, in relation to proceedings in cases of impeachments for misdemeanors.—This Committee reports, on the 30th of April, the precedents of the Earl of Middlesex and Lord Viscount Mordaunt, as the cases " which give the best account of proceedings upon such " impeachments ‡."

* The Lords, on the 1st of May, had sent a message to the Commons, " That, conceiving " the session might not continue much longer, " they thought themselves obliged in justice to " put them in mind of the impeachment brought " up against the Duke of Leeds; and to desire " that the Lords may be acquainted when the " House of Commons can be ready to make " good the articles; to the end, a certain day may " be appointed by the Lords for that purpose."

† It appears from the Lords Journal, that the Duke of Leeds, then President of the Council, was present in his place in the House of Lords on the 27th of April, the day the

impeachment was brought up, and on every other day till the 3d of May, when the Parliament was prorogued.

‡ On the 24th of June, 1701, (two complete Parliaments having intervened) the House of Lords, taking notice, " That the Commons having impeached Thomas Duke of Leeds of high crimes and misdemeanors, on the 27th of April, 1695; and on the 29th of April exhibited articles against him, to which he had answered; but the Commons not prosecuting, order, " That the said impeachment, and the articles exhibited against him, be dismissed."

7. On the 20th of April, 1698, as soon as the Commons have directed Sir Rowland Gwynn to go to the Lords, and impeach Goudet and others, of divers high crimes and misdemeanors, they appoint a Committee to prepare the articles of impeachment, and immediately order the several persons so impeached to be taken into the custody of the Serjeant.

8. On the 26th of April, 1698, Goudet and others, who had been impeached, and taken into custody of the Serjeant, petition to be admitted to bail.—This petition is referred to a Committee to consider in what manner bail hath been taken in like cases of misdemeanor.—They make a report on the 5th of May.—The House then order, That the petitioners be admitted to bail to answer the impeachments of this House, and that the Serjeant be empowered to take the said bail *.—The sureties to be approved by the House.

9. On the 10th of May, 1698, the persons who had offered themselves to be bound as sureties for the appearance of Goudet and others, to answer their impeachment, having objected to the too great generality of the condition of the bond, “as being without limitation of time for their appearance, and implying an obligation for the performance of the judgment which the Lords may give,” and therefore declining to be bound, the Commons order, That when Sir Rowland Gwynn carries up the impeachments to the Lords, he do acquaint the Lords, That the said persons are in custody of the Serjeant, ready to be delivered to the Gentleman Usher of the Black Rod, when their Lordships shall

* See on the 6th, 7th, and 9th of May, the form of their being admitted to bail, with the bail bond, and the approbation of the sureties.—It has been no uncommon proceeding to admit to bail, persons in the custody of the Serjeant at Arms. The bail bonds, which

were entered into by David Avery and others, copies of which are inserted in the Journal, 28th of February, 1731, were (as I have heard from Mr. Onslow) settled on great consideration, by Sir Philip Yorke, then Attorney General.

please to give order therein.—Sir Rowland Gwynn reports on the 11th of May*.

10. On the 16th of May, 1698, the articles against Goudet and others are reported from the Committee appointed to prepare them.—They are read twice and agreed to; and ordered to be ingrossed.—The House then appoint a Solicitor to prepare instructions for managing the impeachments—On the 17th of May, the ingrossed articles are read, and carried to the Lords.

11. On the 11th of May, 1698, the Lords, upon receiving the impeachments against Goudet and others, appoint a Committee to inspect the Journals, concerning the method of receiving impeachments.—This Committee report, on the 13th of May, several instances.—As soon as the articles of impeachment are read, on the 18th of May, the persons impeached are immediately ordered to be taken into the custody of the Black Rod†; and the Committee before appointed are directed to consider the further method of proceeding.—They report on the 19th, and the parties are then ordered to be brought up to the Bar.—A copy of the articles is allowed them, and they are admitted to bail‡, for their personal appearance before the Lords in Parliament from day to day until further order of the House.

12. On the 27th of May, 1698, Goudet and others put in their pleas at the Lords.—But, on being brought to the Lords Bar,

* On the 11th of May the House order an impeachment against John Pierce, for similar crimes.—See also the 27th of May, and the 28th.

† The Lords had, on the 10th of May, when the impeachment was brought up, been informed, “ That the persons were in custody

“ of the Serjeant at Arms attending the
“ House of Commons, and ready to be de-
“ livered to the Gentleman Usher of the
“ Black Rod, when the Lords shall please to
“ give order therein.”

‡ See the form of the bail bonds on the 20th and 23d of May.

the next day, the 28th, and severally asked, Whether they insisted on their plea so put in, or would plead, Not Guilty? they desired to withdraw the same, and to put in their answers.—These answers are, on the 28th, communicated by message to the Commons.—On the 30th of May, the answers are read by the Commons, and referred to the Committee to prepare replications to them.—The Committee report the replications on the 31st.—These are ordered to be ingrossed, and are carried up to the Lords on the 1st of June, by Sir Rowland Gwynn, who is ordered to carry back the original answers.

13. On the 3d of June, 1698, the Lords appoint the trial of Goudet and the others, at the Bar of their House, on the 9th of June.—This message is delivered to the Commons on the 4th of June; who immediately order, That Mr. Speaker do issue his warrant for all witnesses to attend to make good the impeachment; and then they appoint a Committee to manage the trial;—who are to instruct themselves in the evidence, and take their parts for managing the trial upon the said impeachments.

14. On the 6th of June, 1698, the Commons send a message to the Lords, to desire, That a convenient place may be appointed for the Managers, “as is usual *.”

15. On

* These latter words were objected to by the Lords, on the 8th of June, as not warranted by precedents—“For that the Committee of Managers have, on similar occasions, come to the Bar, without provision being made for them.”—This message brought on several Conferences, on the 15th, 16th, and 17th of June, and a Free Conference on the 23d.—The arguments, used on this occasion by the Lords, were drawn principally from what had been “the usual practice.” They say, “The

“reasonableness of what is desired by the
“Commons, has been never considered by us;
“for the Lords were bound to consider
“nothing, but what was usual—Matters of
“form are essential to government, and 'tis of
“consequence to be in the right.—All the
“reason for forms, is custom; and the law of
“forms, is practice; and reason is quite out
“of doors.—Some particular customs may not
“be grounded upon reason, and no good
“account can be given of them; and yet
“many

15. On the 8th of June, 1698, the Commons send a message to the Lords, That, "by reason of extraordinary business," the Commons cannot be ready to-morrow to prosecute the impeachments against Goudet and others; and to desire, That their Lordships will appoint some other day for the said trial.—The Lords, upon receiving the message, immediately appoint a future day.

16. On the 6th of June, 1698, the Earl of Stamford reports in the Lords, from the Committee appointed to search precedents touching the allowing counsel to persons impeached, which report is in the Commons Journal of the 8th of June.—On reading this report, the Lords assign counsel, on their petition, to the impeached parties.

17. On the 28th of June, 1698, Goudet and others, petition the Lords for leave to withdraw their answers.—They are severally brought to the Bar, where they severally relinquish their pleas and answers, and plead Guilty.—They are then ordered to be taken into custody of the Gentleman Usher of the Black Rod (being at that time in custody of their bail)—The Lords desire a Conference, upon the subject-matter of the impeachments; and at that Conference, which is held immediately, the Lords acquaint the Commons, that the persons impeached have confessed themselves guilty, which confession their Lordships have recorded, and have ordered them into custody.—The Lords then direct their Committee to

"many nations are zealous for them; and
"Englishmen are as zealous as any others
"to pursue their old forms and methods."—
The Commons then resolve to be present as
a Committee of the whole House; upon which
the Lords, on the 24th, address the King to
give orders for a place to be prepared in West-
minster Hall for the trial.—See the substance

of what passed at these Conferences in the
Appendix, N° 11. However, at a subsequent
period, at the trial of the Earl of Macclesfield,
in 1725, which was at the Bar of the House of
Lords, the Lords sent word to the Commons,
on the 26th of April, "That they will order
"conveniencies to be prepared there for the
"Managers of the said impeachment."

search precedents, for what judgments have been given upon impeachments of high crimes and misdemeanors.—They report on the 29th *.—The Lords then direct a Committee to inform themselves of the particular value of the estates of the said persons who have pleaded guilty;—who report on the 2d of July.—And then the Lords resolve themselves into a Committee of the whole House, in which they resolve upon what fines shall be set, and what punishment shall be inflicted on the parties; and to these resolutions the House agree.

18. On the 5th of May, 1701, the Lords send a message to the Commons, to put them in mind of the impeachments sent up on the 1st and 15th of April, against the Earl of Portland, Lord Somers, the Earl of Orford, and Lord Halifax; “and that as yet
“ no particular articles had been exhibited against the said Lords;
“ —which, after impeachments have been so long depending, is
“ due in justice to the persons concerned, and agreeable to the
“ methods of Parliament in such cases.”—The Commons return for answer, That the articles are preparing and will be sent up to the Lords in a short time.—See further, on the 15th and 21st of May, similar messages from the Lords to the same purport.

19. On the 8th of May, 1701, Sir Bartholomew Shower reports the articles of impeachment against the Earl of Orford.—On the 16th of May, Mr. Harcourt reports the articles against Lord Somers—which, when ingrossed, are amended on the 19th of May;—and when these articles are ordered to be carried up to the Lords, on the 9th and 19th of May, the person carrying them is directed to pray and demand, “ That the Earl of Orford, and
“ Lord Somers, do give sufficient security to abide the judgment

* The Earl of Stamford reports four cases—Sir Giles Mompesson’s—Lord Chancellor Bacon’s—Sir Francis Michell’s—Lord Treasurer Middlesex’s.

“ of the House of Lords.”—The Lords, on the 9th of May, refer the first of these messages to a Committee; who report, “ That they had inspected their Journals, and do not find any mention of the Commons reading the articles at the Bar; and as for giving security they find none.” And a message to the purport of the latter part of this resolution is ordered to be sent to the House of Commons*.

20. On the 8th of May, 1701, after reading the articles of impeachment against the Earl of Orford, when they are ordered to be ingrossed, the House of Commons resolve, “ That such witnesses as are necessary to be made use of, in relation to the said impeachment, have the protection of this House, during their attendance upon that service.”

21. On the 14th of May, 1701, the Earl of Orford delivers in to the Lords his answer to the articles of impeachment, which is immediately ordered to be copied, in order to be sent to the Commons†—A copy of this answer is accordingly sent on the 15th.—The Lords, as soon as the answer is delivered in, assign counsel to Lord Orford, at his request.

22. On the 21st of May, 1701, the Lords send a message to the Commons, that they, having been desired by the Earl of Orford, that a day may be appointed for his speedy trial, and finding no issue

* It does not appear, from the Commons Journal, that this message was ever delivered; which may account for the Commons repeating, on the 19th of May, their desire, That Lord Somers may give security.—So on the 12th of June, when the ingrossed articles are sent up against Lord Halifax, the messenger is directed to pray and demand, “ That his Lordship may give sufficient security to abide the judgment of the House of Lords.”

† This is so expressed in the Lords Journal; but in the Commons Journal of the 15th of May, the message by the Masters in Chancery is thus entered.—“ We are commanded by the Lords to deliver to this House, the answer of Edward Earl of Orford.”—On the 24th of May, the messengers bring down “ a copy of Lord Somers’s answer.” See the former proceedings, p. 257, N^o 12, in the case of Goudet, and others.

joined by replication of this House, think fit to give notice thereof to this House.—On the 23d, the replication is reported, and ordered to be ingrossed.—It is read again on the 27th of May, but not sent to the Lords, for the reasons given by message to the Lords on the 31st, “ That the Commons think it most proper to begin with the “ trial of the Lord Somers.”

23. On the 23d of May, 1701, Sir Bartholomew Shower, from the Committee appointed to draw up articles of impeachment against Lord Orford, Lord Somers, Lord Portland, and Lord Halifax, reports, That they had directed him to move for power to send for persons, papers, and records, that shall be thought necessary to be used at the trial of the Earl of Orford; and to proceed, in the most speedy and secret way they can, for the advantage of the prosecution; which is agreed to by the House accordingly.

24. The Lords having, on the 21st of May, 1701, put the Commons in mind that they had sent up no replication to the answer of the Earl of Orford, nor particular articles against the other impeached Lords, “ which, after impeachments have so long depended, is a hardship to the persons concerned, and not agreeable to “ the usual methods and proceedings of Parliament in such cases.” —The Commons send word, that they will send an answer by messengers of their own.—On the 23d, they direct the Committee, who were appointed to prepare the articles, to consider of these messages from the Lords, and to inspect the precedents of former messages, and to report the same to the House.—On the 31st of May, Mr. Bromley reports the following answer to the Lords, which is agreed to by the House: “ That as to your Lordships other message, “ the Commons take it to be without precedent and unparliamentary; they, as prosecutors, having a liberty to exhibit their articles of impeachment in due time, of which they, who are to prepare them, are the proper judges.”—The Lords had, on the preceding

preceding day, the 30th of May, appointed the trial of the Earl of Orford on the 9th of June, and had sent a message to this effect to the House of Commons.—But this message from the Lords was not delivered to the Commons till after they had come to the resolution on the 31st *.

25. On the 2d of June, 1701, Lord Stamford reports from a Committee, several precedents of the manner of delivering articles of impeachment by the Commons: and on the 7th of June, he makes a further report of the manner in which the Lords have proceeded on impeachments, between the year 1624 and 1680.

26. On the 16th of June, 1701, the Lords, after a report, made by the Earl Marshal, of the preliminaries to be observed upon the trials of the impeached Lords, come to several resolutions, as rules to be observed on the trial of Lord Somers; and a message is the same day sent to the Commons, to communicate to them the notes and rules which the Lords intend to observe on that occasion.

27. On the 14th of December, 1709, the Committee, who are appointed to draw up articles of impeachment against Dr. Sacheverel, have power to send for persons, papers, and records, and to fit *de die in diem*.

28. On the 15th of December, 1709, as soon as the Lords receive the impeachment at their Bar against Dr. Sacheverel, and are informed, “ That Dr. Sacheverel is in the custody of the Serjeant at Arms attending the House of Commons, and ready to be delivered to the Gentleman Usher, when their Lordships shall order;” they appoint a Committee to consider of that impeachment, and what has

* Several messages and conferences arising upon this subject, in which there is much curious Parliamentary learning, the proceedings are put together, and inserted in the Appendix, N^o 12.

been usual, and what is proper to be done on this occasion.—They report on the 22d of December.

29. On the 17th of December, 1709, Dr. Sacheverel, in custody of the Serjeant at Arms, petitions the House of Commons to be admitted to bail.—The House order a Committee to search precedents concerning taking bail, in cases of persons committed for high crimes and misdemeanors.—On the 19th, the Committee are empowered to search the Lords Journals for precedents upon this point.—On the 22d of December the Committee make their report of precedents * ; and a motion being made, “ That Dr. Sacheverel be admitted to bail,” it passed in the negative.

30. On the 9th of January, 1709, Mr. Dolben, from the Committee appointed to draw up articles of impeachment against Dr. Sacheverel, reports the articles.—They are read a second time on the 11th of January, and agreed to article by article ; and ordered to be ingrossed.—On the 12th, the ingrossed articles are read, and ordered to be carried to the Lords.

31. As soon as the articles of impeachment for high crimes and misdemeanors are brought up to the Lords, on the 12th of January, 1709, they are read ; and the Lords then order, “ That the Gentleman Usher of the Black Rod do forthwith take Dr. Sacheverel “ into his custody †.”

* See, in the Commons Journal of the 22d of December, 1709, this report, extracted from the Journals of both Houses, of the proceedings of admitting to bail persons impeached ; from the instance of Sir Giles Mompesson, in 1621, to the late case of Goudet and others.

† The Lords had been acquainted from the Commons, on the 15th of December, when the impeachment was delivered at their Bar,

That Doctor Sacheverel was in custody of the Serjeant at Arms, ready to be delivered to the Black Rod, when the Lords should order it.—On the 13th of January, the Serjeant acquaints the Commons, that he had delivered him to the Black Rod, and taken a discharge for him on the back of the Lords order.—The order and discharge are entered in the Journal.

32. On the 12th of January, 1709, as soon as the Lords are informed, that Dr. Sacheverel is taken into the custody of the Black Rod, he is ordered to be brought to the Bar, where the articles are read to him.—He desires a copy of the articles—time to answer them—Counsel to assist him—and that he may be bailed.—The three first are allowed him immediately; and, on the next day, the 13th, upon his petition, stating, That he has been a month in custody, to the prejudice of his health, the Lords resolve to admit him to bail; and order a Committee to consider of the sufficiency of the bail * offered by him.

33. On the 25th of January, 1709, Dr. Sacheverel delivers in his answer at the Bar of the House of Lords; which is read, and sent to the Commons, with a desire, “that the said original answer “may be returned with all convenient speed.”—It is read in the House of Commons on the 26th, and referred to the Committee who were appointed to draw up the articles of impeachment, to consider of, and to report their opinion, what is most proper to be done towards the further proceeding thereon.—On the 2d of February, the Committee report, That they have prepared a replication; which is read twice, and agreed to, and ordered to be ingrossed †.—On the 3d, it is again read, and sent to the Lords, together with the original answer.—As soon as the Lords receive the replication, they appoint the time for the trial, at the Bar of the House of Lords; and direct a message to be sent to the Commons to acquaint them with this, and that the Lords will order conveniencies to be prepared there for the Managers of the impeachment.

* On the 14th of January the bail are approved of by the House; and they are called in, and enter into several recognizances; the form of which see in the Lords Journals.—On the 17th, the Lords allow several persons to be his Counsel; and further time; on his petition.

† The replication, amongst other matters,

states “That there are many things in this
“answer, not warranted by the course of
“proceedings upon impeachments; foreign
“to the charge of the Commons; unbecom-
“ing a person impeached; and plainly de-
“signed to reflect upon the honour of the
“House of Commons; for which they might
“demand immediate justice.”

34. On the 4th of February, 1709, as soon as the House of Commons receive the message from the Lords, acquainting them of the time fixed for the trial of Dr. Sacheverel, at the Bar of the House of Lords, they appoint Managers to make good the impeachment.—They then resolve, “That this House will be present at the trial, as a Committee of the whole House;” which message they send to the Lords; and desire, “That a convenient accommodation may be prepared for them.”—On the receipt of this message from the Commons, on the 6th of February, the Lords immediately address the Queen, to give orders for preparing Westminster Hall.

35. On the 10th of February, 1709, the Commons add Mr. Walpole, General Stanhope, and several other persons, to the Managers—give them power to send for persons, papers, and records—and appoint a Solicitor to the Managers, for prosecuting the impeachment.

36. On the 13th of February, 1709, Dr. Sacheverel petitions the Lords, to acquaint them, that some of the Counsel allowed to assist him had returned their fees, and refused to assist him; and therefore praying, that the Lords would assign other Counsel, and also a Solicitor; to which the Lords agree.

37. On the 18th of February, 1709, the Lords appoint a Committee to consider of tickets to be allowed to each Lord; and, on the 23d, make several regulations, touching this and other matters respecting the trial.—On the 24th of February, the Commons make their orders, relating to their attendance in the places prepared for them; and direct, “That nothing that shall be said at the trial, by any Member of this House, or by any person produced by the Commons as a witness, shall be printed or published without leave of the House.”

38. On

38. On the 25th of February, 1709, a message is sent to the Lords from the Commons, with the names of such witnesses as are to be examined to make out the impeachment; and to desire that the Lords will make forth summons for their attendance.—The Commons also make their orders*, touching the manner of the attendance of the Managers and Members.—See also the Lords Journal of the 25th of February, for the ceremonies to be observed at the trial.

39. On the 12th of July, 1715, Lord Oxford is committed to the Tower, on the 11th and 12th articles of impeachment, containing an accusation of High Treason; but before he withdraws from the Lords Bar, he desires a copy of the articles†, and time to answer, and Counsel‡ and a Solicitor to assist him in his defence; all which requests are granted.

40. On

* On the 27th of February, the Commons make an alteration in the order in which the Speaker and Members are to go out of the House to the trial.—In the instance of Mr. Hastings's impeachment, the House of Commons on the 6th of February, 1788, make several orders respecting the form and manner in which the House and the Managers should attend the trial in Westminster Hall. This form was similar to that which was here directed to be observed by the order of the 27th of February, 1709; and which was afterwards followed in the case of Lord Lovat; and continued to be the form observed at Mr. Hastings's trial, till it became very inconvenient, from a difficulty of procuring the attendance of forty Members, to enable the Speaker to take the chair, in order to call over the names of the Managers to proceed to the trial. This inconvenience, which appeared more particularly on the 28th of February, 1793, induced the House of Commons to change this form, and to adopt the mode that had been used at the trial of Lord Strafford, in 1640; and on the

1st of March they accordingly resolve, "That every day, on which the trial shall be proceeded on, the House shall meet as a Committee in Westminster Hall; and that the House shall on such days sit at three o'clock in the afternoon." At the same time, they give "leave to the Speaker to take the chair, for the purpose of receiving a message from the Lords relating to the time of the further proceeding on the trial, although forty Members should not be present."

† He makes a further request, That, as the Commons had reserved a power to exhibit further articles, he doubted not but that the Lords would likewise allow him a copy of these, and time to answer.—On the 2d of August the Commons do exhibit further articles of high crimes and misdemeanors, a copy of which is sent to him, and time allowed.—He is ordered to be brought to the Bar, on the 3d of August, to hear these articles read; but this attendance is, the next day, dispensed with, on account of his health.

‡ On the 2d of May, 1716, the Lords,

40. On the 3d of August, 1715, Lord Oxford petitioned the Lords that he might have leave to apply for copies of records or other papers that he should think necessary for his defence.—This is allowed him; but, on the 8th of August, he presented another petition, desiring the perusal and copies of such memorials, letters, treaties, or other papers, as were referred by the House of Commons to their Committee of Secrecy, and upon which the articles against him were founded; and also copies of all treaties, Treasury warrants, reports, and other papers, mentioned in the report from the Committee of Secrecy.—This petition is referred to a Committee, who are to inspect precedents of what hath been done in cases of this nature.—On the 13th of August, this Committee make a report; and some entries out of the Journals being read, the Lords order, “That Lord Oxford have leave to cause copies to be
 “ taken of all warrants and other papers in the Treasury Office,
 “ and of the Journals of Parliament, and of public treaties, referred
 “ to in any of the articles exhibited against him, and of all other
 “ records whatsoever.”

41. On the 2d of September, 1715, Lord Oxford's answer being ready, but he continuing under great pain and indisposition, the Lords, upon his petition, and the examination of his physician, Dr. Mead, give leave for his Solicitor to deliver in his answer.—On

read 3^d, and pass, a “Bill, for allowing of
 “ Counsel to all persons who shall be pro-
 “ ceeded against in Parliament for any crimes
 “ of treason or misprision of treason.”—It is immediately read once in the House of Commons; but the question being put, That it be read a second time, it passed in the negative.—The purport of this Bill (which is preserved in the office belonging to the House of Commons) was to repeal so much of the 12th clause of the 7th of William III. ch. 3, “An
 “ Act for regulating of trials in cases of trea-
 “ son and misprision of treason” (which

clause provides, “That nothing in that Act
 “ contained should be construed to extend to
 “ any impeachment or other proceedings in
 “ Parliament”) as relates to the assigning of Counsel to persons impeached, or proceeded against in Parliament.—By a subsequent statute of the 20th of George II. ch. 30, it is enacted,
 “ That every person who shall be impeached
 “ by the Commons of High Treason, or of
 “ misprision of treason, shall be received and
 “ admitted to make his full defence by Coun-
 “ sel.”

the 3d of September, the Solicitor delivers the answer in, upon oath, to all the articles that had been exhibited by the Commons ; which is read ; and a Committee appointed to inspect precedents of the method of proceeding.—The Committee report several precedents on the 5th of September, and the Lords then order a copy of this answer to be sent down, by message, to the Commons.

42. On the 12th of September, 1715, Lord Oxford's answer to the articles of impeachment being read in the House of Commons, it is referred to the Committee appointed to draw up the articles, to prepare a replication.—They report on the 16th of September.—The replication is agreed to, and ordered to be ingrossed ; and, on the 19th of September, the ingrossed replication is read, and ordered to be carried to the Lords.—Upon reading this replication, on the 20th of September, the Lords immediately address the King, to give directions for preparing a scaffold in Westminster Hall, for the trial of Lord Oxford.—This address, and the King's answer, is communicated to the House of Commons on the 21st.

43. On the 1st of September, 1715, Lord Strafford, on the articles of impeachment for high crimes and misdemeanors against him being read, desires that the papers delivered by him, to either of the Secretaries of State, might be restored to him, “ without “ which it would be impossible for him to make his just defence.”—The Lords, after debate, and reading the petition of Lord Oxford on the 8th of August, and the order made thereupon, order, “ That “ Lord Strafford have copies of all Journals of Parliament, of public treaties referred to in the said articles, and of all other records “ whatsoever ; and also of all such papers delivered up by the said “ Earl, of which there are any copies in the public offices.”—On the 9th of January, 1715, Lord Strafford presents his answer, a copy of which is sent to the House of Commons on the 17th of January.—On the 28th of January, this answer is read, and referred to the Committee

Committee of Secrecy to prepare a replication.—The replication is reported on the 12th of June, 1716, and ordered to be carried to the Lords on the 13th.

44. On the 10th of January, 1715, Lord Derwentwater, and the other Scotch Lords impeached for High Treason, are brought to the Bar of the House of Lords to hear the articles read.—They are then allowed Counsel * and a Solicitor, and copies of records for their defence, and summonses for their witnesses †.—The Lord Chancellor is directed to write letters to the absent Lords, to require their attendance on the service of the House.

45. On the 19th of January, 1715, Lord Derwentwater, and the other impeached Lords, are brought to the Bar of the House of Lords, to deliver in their answers to the articles, when several of them plead guilty ‡.—Their answer and pleas are ordered to be recorded, and a message § is sent to the Commons to acquaint them therewith.—The Lords are remanded to the Tower.

46. On

* On the 11th and 12th of January they name their Counsel and Solicitor.

† It is ordered, that the witnesses summoned by the impeached Lords shall have the protection of this House, for their safe coming and going, during the time of the said trial.

‡ The Earl of Winton presents a petition, desiring further time for delivering in his answer, which is allowed him.

§ This proceeding, of acquainting the Commons by message only, is afterwards objected to; and, on the 15th of February, 1715, the Commons resolve to demand a Conference; in which they acquaint the Lords, “ That the
“ Commons conceive it to be a parliamentary
“ course to be observed for the future, that
“ all writings delivered in to the House of
“ Lords by persons impeached by the Com-

mons, at the time when they put in their
“ answers or pleas, or true copies of such
“ writings, should be forthwith sent to the
“ Commons.”—This is referred to a Committee, who, on the 20th of February, report,
“ That, upon inspecting the Journals of the
“ Lords, they do not find that such writings
“ have been communicated to the Commons;
“ but, that the Committee are of opinion,
“ that it may be reasonable (the Commons
“ having desired it) that this proceeding
“ should be observed for the future.”—To this report the Lords agree; and resolve,
“ That, for the future, all writings, delivered
“ in to the House of Lords by persons im-
“ peached by the Commons, at the time when
“ they put in their answers or pleas, or true
“ copies of such writings, shall be forthwith
“ sent

46. On the 23d of January, 1715, Lord Winton delivers in his answer at the Lords, a copy of which is ordered to be sent to the Commons.—On the 25th of January, it is read in the House of Commons, and referred to the Committee who were appointed to draw up the articles of impeachment; who are directed, on the 26th, to consider of a replication*; which they report, and it is carried up to the Lords on the 28th of January †.

47. The Lords having appointed Thursday the 8th of March for the trial of Lord Winton, the House of Commons, on the 3d of March, order, That the Committee, appointed to draw up the articles, and prepare evidence, be appointed Managers at the trial of the said Earl; and a Solicitor is also appointed ‡.

48. The

* sent to the Commons." This resolution is communicated to the Commons, at a Conference held on the 7th of March.—See in the former part of this Vol. p. 18, in a note, the reason that this Conference was so long deferred.

• On the 27th of January, the House of Commons order, "That such Members of the Committee appointed to prepare the replication to the answer of Lord Winton, as are Justices of the Peace for the County of Middlesex, be empowered to examine, in the most solemn manner, such persons as shall be judged necessary to be produced as evidence at the trial of the said Earl."—On the 28th of January, Mr. Hampden reports, that he had, at the Bar of the House of Lords, "made the replication," directed by this House, to Lord Winton's answer.

† On the 10th of February, the Lords make an order for the attendance of several persons, as witnesses on behalf of Lord Winton, at his trial; and that such persons shall have the protection of the House for their safe coming and going, during the time of the said

trial.—On the 15th of March, the Commons receive a message from the Lords, to acquaint them, "That, at the request of Lord Winton, the Lords do desire, that this House will give leave to General Carpenter, a Member, to be examined as a witness at his trial;" which leave is granted accordingly.

‡ The trial being deferred to the 15th of March, the House of Commons, on the 14th, resolve to be present as a Committee of the whole House, and that they will proceed to the Court in Westminster Hall, as they did to hearing judgment pronounced against the six condemned Lords.—See this form on the 7th and 9th of February, 1715.—See also the proceeding on the 15th of March; where several Members refused to come out of the places prepared for the House of Commons, and a Committee is appointed to go, with the Serjeant and Clerk, to take their names, which are reported to the House.—On the 13th and 14th of March, the Lords make their addresses, and orders for the attendance of officers, and directing the forms of their proceeding.—On the 14th of March, they order, "That,

48. The Lords * having appointed the day for the trial of Lord Oxford, the Commons, on the 14th of June, 1717, appoint a Committee of Managers † to prepare evidence, and to proceed, in the most speedy and secret way they can, for the advantage of the prosecution.—On the 24th of June, the House resolve to be present as a Committee of the whole House ‡.

49. On the 18th of March, 1724, Sir George Oxenden, from the Committee appointed to draw up articles of impeachment against Lord Macclesfield, reports the articles § ; the same are read twice, and severally agreed to, and ordered to be ingrossed, with a saving clause.—This clause is reported on the 19th of March ; and on the 20th the ingrossed articles are read, and carried to the Lords ||.

“ That, if any Peer of Great Britain, who
 “ has not a place in Parliament, shall be ad-
 “ mitted as a witness at the trial, a chair be
 “ placed for him near the table in the Court ;
 “ and that such Peer shall be sworn by the
 “ Lord High Steward, and deliver his evi-
 “ dence, standing up, there.”

* On the 31st of May, 1717, the Committee appointed to search precedents, having acquainted the Lords, “ That they observe,
 “ that the first step usually taken, after the
 “ appointment of a trial upon an impeachment
 “ for High Treason, has been to address for
 “ the appointing a Lord High Steward.”
 The Lords immediately address his Majesty for that purpose.—The Lord Chancellor Cowper was accordingly appointed Steward *pro hac vice*. See the Commission, in the State Trials, Vol. VI. p. 102.—It runs in the form settled in the instance of Lord Stafford,
 “ Ac pro eo quod Proceres & Magnates nobis
 “ humiliter supplicaverunt, ut Seneschallum
 “ Magnæ Britanniae pro hac vice constituere
 “ dignaremur.” See before, the note § p. 191.

† They have power to send for persons,

papers, and records, and a Solicitor is appointed to attend them.

‡ See the directions given, and form observed, in the Managers and the House going, as a Committee, to attend the trial in Westminster Hall.

§ A doubt seems to have arisen, Whether the crimes charged in these articles against Lord Macclesfield, were not within the Act of general pardon, passed four years before ? This Act, and the proceedings in the Journals of the 7th and 16th of May, 1713, were read ; from which it appeared, that the House, at that time, declined proceeding against William Churchill, Esquire, and Thomas Earl of Wharton, charged with breach of trust and corruption, because the crimes with which they were charged were committed before the Act of general pardon, passed in the 7th year of Queen Anne.

|| When the articles are read in the House of Lords, on the 20th of March, Lord Macclesfield desires to have a copy of them, and Counsel assigned him ; which are accordingly ordered.

50. On the 8th of April, 1725, Lord Macclesfield puts in his answer, a copy of which is ordered to be prepared, and sent by message to the House of Commons *.—On the 9th of April, this answer is read in the House of Commons, and is referred to the Committee appointed to draw up the articles of impeachment, “ to consider of, and report their opinion what is most proper to be done towards the further proceedings thereon.”—On the 23d of April, they report a replication, which is ordered to be ingrossed, and carried to the Lords on the 24th.

51. On the 26th of April, 1725, as soon as the Commons receive a message from the Lords, to acquaint them of the day fixed for the trial of Lord Macclesfield, they appoint Managers to make good the impeachment; and, on the 27th name Solicitors to the Managers.—On the same day, the Commons appoint a Committee, to search precedents touching the method of proceeding upon trials of impeachment, “ at the Bar of the House of Lords.”—This Committee make their report on the 5th of May.

52. On the 11th of December, 1746, after the resolution had passed for impeaching Lord Lovat of High Treason, and Sir William Yonge had reported, that he had accordingly, pursuant to the commands of the House, impeached him at the Bar of the House of Lords—a Committee † is appointed to draw up articles of impeachment, and prepare evidence.

* This message is in pursuance of a report made from the Committee, appointed on the 13th of February preceding, to inspect their Journals touching the mode of proceeding upon delivering in an answer to articles of impeachment.

† The House of Commons, at the same time, came to the following resolution, “ Whereas “ the said Peer is already under commitment,

“ that therefore this House will not desire the “ Lords, that he may be committed to safe “ custody, as hath been usual in cases of this “ nature.”—On the 12th of December, several papers are presented to the House by the King’s command, and referred to the Committee; and five are appointed to be the quorum of the Committee.

53. On the 16th of December, 1746, Sir William Yonge reports the articles of impeachment against Lord Lovat.—They are read once, and then a second time, paragraph by paragraph; and, upon the question put upon each paragraph, are agreed to by the House, to be the articles of impeachment.—They are ordered to be ingrossed.—A clause is offered, saving liberty to the Commons to exhibit any other articles; which is read a second time, and agreed to, and ordered to be ingrossed.—On the 17th of December the ingrossed articles are read, and ordered to be carried to the Lords.

54. On the 17th of December, 1746, as soon as the articles of impeachment against Lord Lovat are read in the House of Lords, the Duke of Newcastle acquaints the House, that Lord Lovat is “already” under commitment for High Treason in the Tower.—An order is made for bringing him to the Bar on the 18th, to hear the articles read.—He is accordingly brought up on the 18th, and the articles being read to him, and being asked what he had to offer, a petition from him is presented and read, praying for a copy of the articles, and for Counsel and a Solicitor to be appointed him*; which are accordingly granted, and summons for his witnesses†.—An order is then made, “That Lord Lovat do stand committed to the Tower of London, to be there safely kept, in order to his trial; and that no person shall have access to him, without the special leave of the House.

* Lord Lovat also complains, in his petition, that persons have taken possession of his estate, and have orders to levy his rents; on which the Lords order, “That the said Lord Lovat be permitted to receive the rents and profits of his estate, by his factors or agents, in like manner as if he was not under an accusation of High Treason.—And that the

“ Lord Advocate for Scotland do take the proper methods to carry this order into execution.”

† The Lord Chancellor is ordered to write to the absent Lords, requiring their attendance on the 21st of January, on occasion of the proceedings now depending against Lord Lovat.

55. On the 13th of January, 1746, Lord Lovat, being brought to the Bar, delivers in his answer; which is read, and a copy of it is ordered to be prepared, and sent to the House of Commons.—It is brought down on the 14th of January, and read, and referred to the Committee appointed to draw up articles of impeachment and prepare evidence.—And the Committee are ordered to prepare a replication to the said answer.—On the 16th, the replication is reported to the House, read a second time and agreed to, and ordered to be carried to the Lords*.

56. On the 22d of January, 1746, the Lords appoint the 23d of February† for the trial of Lord Lovat in Westminster Hall‡; and send a message to this purport to the House of Commons.—Upon receiving this message, the Commons resolve, “That this “House will be present at the trial, as a Committee of the whole “House.”—And they then appoint the Committee, who were to draw up the articles, to be the Managers, to make good the articles of impeachment.

57. On the 13th of February, 1746, the Commons appoint a Committee to inspect the Lords Journals, in relation to their pro-

* The order is, “That Sir William Yonge “do go to the Bar of the House of Lords, “and make a replication to the answer of Simon Lord Lovat, to the effect following,” &c. &c.—Sir William Yonge reports, “That “he had made the replication directed by “this House.”

† The trial is afterwards deferred, at Lord Lovat’s request, to the 5th, and then to the 9th of March.

‡ The Lords then appoint a Committee to inspect their Journals, relating to former cases of impeachment, and to consider of the methods of proceeding on this impeachment.—This Committee make their report, on the

2d of February, of all the rules and orders necessary to be observed at the said trial.—And, in consequence of this report, the Lords address the King for the appointment of a Lord High Steward, and for guards to attend, “as has been usual, in cases of trials.”—The Lords order, on the 4th of February, “That “the commission for appointing a Lord High “Steward shall be in like form as that for the “trial of Lord Stafford, as entered in the “Journal of the 30th of November, 1680.”—On the 10th of February, the Lords make further orders, about places in Westminster Hall, and tickets.

ceedings upon the impeachment of Lord Lovat *.—The Committee of Managers are empowered to examine such persons, who are in custody, as they shall think necessary to be examined.—And a Solicitor is appointed to the said Managers, for prosecuting the said impeachment.

58. On the 3d of March, 1746, the Commons direct the forms of their proceeding to Westminster Hall † ; and that these orders shall be observed every day, that the House shall go, as a Committee of the whole House, to the trial of Lord Lovat.

* This Committee report on the 17th of February; and, amongst other things, “ That they have examined the commission of the Lord High Steward, as entered in the Journal of the Lords; and do find the same to be conformable to what was settled and agreed upon between both Houses of Parliament, *in pursuance of the amendment proposed by the Commons*, as entered in the Commons Journals of the 15th of May, 1679, and the 29th of November, 1680.”—See before the note in p. 191.—The Commons then ap-

point a Committee to view the court erected in Westminster Hall, and to report what conveniencies and accommodations are made for the Members of the House of Commons.

† An entry is read from the Journal of the 27th of February, 1709, in the case of Dr. Sacheverel, as to the time, at which the Speaker is to go; and directions are given by the House, “ That this precedent shall be observed upon occasion of the trial of Lord Lovat.”—See before note *, in p. 267.

V. *Proceedings on the Trial.*

1. **O**N the 4th of June, 1689, the House of Commons resolve *, “ That it is the opinion of this House, that “ a pardon is not pleadable in bar of an impeachment in Parliament.”

2. On the 14th of January, 1689, the Lords, on considering a report from their Committee of Privileges, made on the 10th of January, resolve †, after much debate, “ That it is the antient “ right

* This resolution had no reference to any trial then pending, but arose out of the consideration of Heads for a Bill of Indemnity.— See before, p. 193, and the note †.

† See, however, a very sensible protest of Lord Nottingham and others, against this resolution. Indeed it is difficult to understand clearly, what is the meaning of the resolution, and what consequences it was intended to produce.—If it is supposed to declare, “ That a “ Peer indicted for a capital offence can only “ be tried in full Parliament,” *i. e.* before “ the House of Peers, Parliament sitting;” or, as Mr. Justice Foster properly terms it, “ the Court of our Lord the King in Parliament;” this would be, at once to take away and entirely abolish, by a resolution of one House of Parliament, without an act of the Legislature, a legal and very antient court of judicature, viz. “ The Court of the High “ Steward,” a court instituted by commission from the Crown, in the nature of a commission of Oyer and Terminer; where the High Steward is the sole judge in points of law and practice, and the Peers, summoned by his precept, are triers and merely judges of fact. (See Mr. Justice Foster’s case of Earl Ferrers,

in his Crown Law, p. 138.) This Court has been frequently instituted for the trial of Peers, though not indeed since the Revolution; and till it shall be abolished and taken away by Act of Parliament, it may still, notwithstanding this resolution of the Lords, be resorted to, if the Crown, on any occasion, be so advised. The only law that has passed on this subject is the 7th William III. ch. 3. sect. 10. which enacts, “ That upon the trial of any “ Peer, ‘ for treason or misprision of treason,’ “ all the Peers, who have a right to sit and “ vote in Parliament, shall be summoned; “ and every Peer so summoned and appearing, shall vote on the trial.” By this Act, the High Steward may perhaps, on trials for treason or misprision of treason, be compelled to summon, as triers in his court, all Peers that have at the time the right to sit and vote in Parliament. But, with regard to indictments for other capital offences, as no law has passed to make any alteration in the form or constitution of the High Steward’s court, I should suppose, notwithstanding this declaratory resolution of the Lords, the Crown might by law, issue the commission exactly in the manner as has formerly been done. It appears

“right of the Peers of England, to be tried, only in full Parliament, for any capital offences.” And this resolution is added to the Standing Orders of the Lords.

3. On the 17th of June, 1701, the Lords proceeded on the trial of Lord Somers in Westminster Hall, upon an impeachment from the Commons. The articles are read, and several questions proposed to the Judges; and the Commons not appearing, nor any Managers on their behalf*, the Lords acquit Lord Somers, and dismiss the impeachment†.—And, on the 23d of June, a similar proceeding is had at the trial of the Earl of Orford.

4. On

appears from Mr. Montagu's report of the Free Conference with the Lords in 1691, which is inserted in the Appendix to this volume, N° 3, that the Commons understood this resolution of the Lords (the substance of which the Lords had at that time inserted in a Bill by way of amendment) in the light of taking away the King's power to erect a Lord High Steward's court, in cases of treason and misprision of treason. Whether the clause before mentioned, in the 7th William III. ch. 3, does take away the power of the Crown to constitute a court of Lord High Steward in those particular cases, or only compels the Lord High Steward to summon all Peers, that have a right to vote, as triers, instead of a select number, as has always been usual, must be determined when the case shall arise. No such court has been constituted since the Revolution, so the question never has arisen. This clause however does not go near so far as the Lords resolution of the 14th of January, 1689, as nothing is said in the Act about being tried “only in full Parliament.” See the Lords reasons in the Appendix, N° 3.—At the trial of Lord Delamer in 1685, before Lord Jefferies, in the court of the Lord High Steward, he puts in a plea to the jurisdiction of the court, “That the Parliament were at that time in being, though

“under a prorogation; and that no Peer ought to be tried for High Treason, ‘during the continuance of a Parliament’ except ‘in the House of Peers, and before the whole body of the Peers there.’” See Lord Jefferies's answer to this objection, in the State Trials, Vol. IV. N° 137. p. 216. The Standing Order of the Lords, in 1689, does not even make the condition, “If a Parliament shall be in being,” but directs generally, “That a Peer shall only be tried in full Parliament, for any capital offence.”

* In the Journal of the 17th of June, there is an entry of the reasons, which induced the Commons to decline attending at this trial, at this time.—See this entry inserted in the Appendix to this Volume, N° 12.

† In the State Papers published by the second Earl of Hardwicke, there are several letters from King William to Pensionary Heinsius, relating to the Treaty of Partition, for which Lord Somers and the other Lords were impeached. In the introduction to the publication of these letters, Lord Hardwicke makes the following observation:—“Though the Partition Treaty (which proceeded originally from Louis XIVth.) ended unfortunately, and displeased all parties, the disinterested and upright intentions of King William in promoting it
“are

4. On the 23d of June, 1701, the Lords resolve, " That the
 " Lords who absented themselves from the trial of Lord Orford,
 " and shall not make a just excuse for the same, are guilty of a great
 " and wilful neglect of their duty."

5. On the 24th of June, 1701, the Lords dismiss the impeach-
 ments against the Earl of Portland, there being no articles exhi-
 bited against him *.—They also dismiss the impeachment against
 Charles Lord Halifax, the Commons having exhibited articles
 against him, to which he had answered, and no farther prosecu-
 tion was had thereupon.—The Lords also resolve, " That, the
 " Commons having exhibited articles against the Duke of Leeds,
 " on the 29th of April, 1695 †, to which he answered, but the
 " Commons not prosecuting, the said impeachment, and the ar-
 " ticles exhibited against him, shall be, and they are hereby dis-
 " missed."

" are sufficiently apparent from these papers :
 " Strong sense, and an extensive view of the
 " interests of Europe, particularly those of
 " the country he governed, are no less dis-
 " cernible; and will do honour to the me-
 " mory of a Prince, who, with all his defects,
 " deserves the veneration of every good Eng-
 " lishman."—State Papers, Vol. II. p. 333.
 —That the first proposal for the Treaty of
 Partition came from the French King is con-
 firmed by L'Abbé Millot, in *Les Memoires*
Politiques et Militaires; " Effectivement le
 Roi Guillaume, ce grand promoteur de ce
 qu'on appelloit l'équilibre de l'Europe, cher-
 choit les moyens d'empêcher la reunion des
 deux monarchies. Mais Louis XIV. se pre-
 toit à ses vues, et lui fit même les premières
 propositions," Vol. I. p. 288; and also by
 M. de Torcl, " Ces circonstances, jointes au
 desir sincere de maintenir la paix, determine-
 rent le Roi, à proposer au Roi d'Angleterre,
 un partage de la monarchie d'Espagne :"—
Memoires, Vol. I. p. 42.

* On the 26th of February, 1701, the
 House of Commons resolve, " That it is the
 " undoubted right of every subject of Eng-
 " land, under any accusation, either by im-
 " peachment or otherwise, to be brought to a
 " speedy trial, in order to be acquitted or con-
 " demned."

† This was in a Parliament which was dis-
 solved on the 11th of October, 1695.—An-
 other Parliament had been chosen, and met on
 the 22d of November, 1695, which was also
 dissolved on the 7th of July, 1698.—Another
 Parliament was chosen, which met on the 24th
 of August, 1698; and was dissolved on the
 19th of December, 1700.—The following
 Parliament met on the 6th of February, 1700,
 in which this impeachment was dismissed.—
 Two complete Parliaments therefore had in-
 tervened, between the time of the delivery of
 the articles at the Bar of the Lords, and the
 dismissal of " the said" impeachment by the
 Lords.

6. On the 25th of February, 1709, the Lords appoint the several ceremonies to be observed at the trial of Dr. Sacheverel, and address the Queen for the guards to attend, “as has been usual in such cases.”—On the 27th of February, the Commons direct in what manner the Speaker and Members shall go out of the House to Westminster Hall.

7. Dr. Sacheverel’s trial begins on the 27th of February, 1709*.—On the 28th, the Lords adjourn to the House above, where a question being put, “That the Counsel for the prisoner be permitted to make their defence to the first article, before the Commons proceed on the second,”—it passed in the negative.—The Lords then return to Westminster Hall†, and the trial proceeds.

8. On the 1st of March, 1709, exception being taken at some expressions used in Westminster Hall, by Mr. Dolben, (one of the Managers at the trial of Dr. Sacheverel) the Lords adjourn to the House above; when the Lord Chancellor is directed to call on Mr. Dolben to explain his meaning in those expressions; which, on their return to Westminster Hall, Mr. Dolben accordingly does‡.

9. On the 2d of March, 1709, during the trial of Dr. Sacheverel, the House of Commons being informed that there were several

* See this trial as published in the State Trials, Vol. V. p. 645.

† It appears from the Lords Journal, that, during the adjournment of the Lords to the House above, for the purpose of determining this question, the Managers continued in the Hall, and the prisoner remained at the Bar.—So on the 1st of March.

‡ On the 27th of April, 1789, Mr. Hastings prefers a petition to the House of Commons, complaining of some words used by Mr. Burke, one of the Managers, at the trial of the im-

peachment in Westminster Hall, in which Mr. Burke had accused him “of having murdered Nundcomar, by the hands of Sir Elijah Impey,” and desires redress.—On the 1st of May this petition is taken into consideration, and a Committee is appointed to inspect precedents relating to such complaints.—The Committee reports on the 4th of May; and the House resolve, “That the words spoken by Mr. Burke, ought not to have been spoken.”

Members in Westminster Hall, before the managers went, they order several Members to go with the Serjeant and Clerk into those places, to take the names of such Members as shall refuse to return.—See also the 3d of March.

10. On the 3d of March, 1709, the Managers for the impeachment of Dr. Sacheverel desiring leave, at the trial, to confer together, saying, “That they would soon return”—the Lords, in the interim, adjourn to the House above, and afterwards return to Westminster Hall; when the Managers acquaint the Lords with their reasons for withdrawing.—So on the 6th of March.

11. On the 7th of March, 1709, when Dr. Sacheverel’s Counsel had finished his defence, Dr. Sacheverel desired that he might be heard after the Managers should have replied; which being objected to by the Managers, the Lords told him, “That if “he had any thing to say he must now speak.”—He is accordingly heard; and on the 9th of March the Managers for the Commons reply.

12. On the 10th of March, 1709, after the reply of the Commons, at the trial of Dr. Sacheverel, the House of Lords being moved, in Westminster Hall, “That a question might be asked of “the Judges,” the Lords adjourn to the House above; and a motion being made there, “That the question might be proposed in “the Court below,” after debate, and reading some proceedings in the case of Lord Viscount Stafford, it was agreed*, “That the “same should be ‘proposed’ below.”—The Lords being then ad-
“ journed

* Upon this question, of the expediency of the Judges delivering their opinion in public, in the presence of the Managers of the prosecution and of the person accused, see much information stated in a report made to the House of Commons on the 30th of April, 1794, from a Committee appointed to inspect the Lords

Journals, in relation to their proceedings on the trial of Warren Hastings, Esq.—under the head “Publicity of the Judges opinions,” p. 9, in the printed report—Almost from the commencement of the trial of the impeachment of Mr. Hastings, the questions that were referred to the Judges on points of evidence, &c. (which

journed to Westminster Hall, the question was ‘proposed;’ and, after a second adjournment to the House above, it was agreed, “That the question should be ‘put’ to the Judges in the Court below;” which was accordingly done; and the Judges having given their answer in Westminster Hall, the Lords again adjourned to the House above, when the Lord Chancellor declares what the opinion of the Judges was upon that question.

13. The question put to the Judges * in Westminster Hall, on the 10th of March, 1709, at the trial of Dr. Sacheverel, was, “Whether by the law of England, and constant practice, in all prosecutions, by indictment or information, for crimes or misdemeanors, in writing or speaking, the particular words supposed to be criminal must not be expressly specified in such indictment or information?” to which the Judges all answered in the affirmative †.—On the 11th of March the Lords resolve, “That they will proceed to the determination of the impeachment according to the law of the land, and ‘the law and
“ usage

were very numerous, as the Lords referred to the Judges almost every question that arose) were “proposed and put” to them, not only not in Westminster Hall, in the presence of the parties, but in the House of Lords, “with their doors shut;” and the answers of the Judges were delivered “in the same secret manner.”—The objections to this mode of proceeding, “as well with regard to its novelty “in point of precedent, as to its being a violation of the first principles of Justice,” are very ably stated in a protest signed by three Lords on the 29th of June, 1789.—See in the before mentioned report of the 30th of April, 1794, the title “Mode of putting the Questions.”—Indeed the whole report is most ably drawn; and contains a great deal of information on the law and practice of Parliament on the subject of impeachments. At the trial of the Earl of Warwick in 1699, before the House of Peers,

for murder, on a question of law being to be put to the Judges, it is taken for granted, that the opinion of the Judges must be taken in the presence of the prisoner; Lord Somers, Lord High Steward says, “It must certainly be in the presence of the prisoner, if you ask the Judges opinion.” State Trials, Vol. V. p. 169.

* The Judges had been ordered to attend the House of Lords till the trial was over, and all debates thereupon; but on the 14th of March, the Lords being informed, “That, notwithstanding her Majesty’s proclamation for altering the times of the assizes, there will be a delay of justice if some of the Judges do not begin their circuit,” the Lords gave leave to three of the Judges to proceed on their circuit.

† This opinion of the Judges, “That the particular words supposed to be criminal,
“ nal,

“ usage of Parliament; ” and direct the Clerks, and on the 13th appoint a Committee, to search precedents upon this subject. —On the 14th of March the precedents are reported; and the Lords resolve, “ That by the law and usage of Parliament, in prosecutions by impeachment for high crimes and misdemeanors, by writing or speaking, the particular words supposed to be criminal are not necessary to be expressly specified in such impeachment *.”

14. On the 16th and 17th of March, 1709, the Lords, on separate questions†, resolve, “ That the Commons have made good the several articles against Dr. Sacheverel; and it was then proposed, “ That, the Commons having made good the several articles against Dr. Sacheverel, the said Doctor is guilty of high crimes and misdemeanors.” But, on the 18th, this question is amended, and the question agreed to be put in Westminster Hall is, “ Is Doctor Sacheverel guilty of high crimes and misdemeanors, charged on him by the impeachment of the House of Commons; ” and that the answer shall be “ Guilty, or Not guilty, only ‡.”

“ nal, ought to be expressly specified in every indictment or information,” has been since much controverted.—In Layer’s trial in 1722, Mr. Justice Eyre denies that opinion to be law; and cites several cases, where the practice had been otherwise—and Lord Chief Justice Pratt says, “ As to what you say, That the words must be set forth, it is perfectly wrong; a man may set forth the substance of the words, without shewing the words themselves; that is the proper way to be taken; and, when it is otherwise, it is not so, as it ought to be done.”

State Trials, Vol. VI. p. 331.

* See the protest of several Lords against this determination.—The Lord Chancellor Cowper, in pronouncing judgment on Dr.

Sacheverel, taking notice of this opinion of the Judges, and of the resolution of the Lords, of the 14th of March, says, “ So that, in their Lordships opinion (the law and usage of the High Court of Parliament “ being a part of the law of the land,” and that usage not requiring the words should be expressly specified in impeachments) the answer of the Judges, which related only to the course in informations and indictments, does not affect your case.”

Lords Journal, 23d of March 1709.

† These questions are put and determined in the House of Lords; but the question of Guilty or Not guilty is put in the court in Westminster Hall.

‡ See the protest upon this occasion.

15. On the 20th of March, 1709, the Managers of the Commons being present in Westminster Hall, but Dr. Sacheverel not at the Bar, the Lord Chancellor put the question severally to the Lords, “Whether Dr. Sacheverel is guilty of the high crimes and misdemeanors charged upon him?” and the Lords having severally declared, “Guilty,” or “Not guilty,” the Lord Chancellor, having cast up the votes, declared him “Guilty.”—Dr. Sacheverel is then ordered to the Bar, and the Lord Chancellor informed him, “That the Lords had found him Guilty.”

16. Dr. Sacheverel, after having been found guilty, desired, on the 20th of March, 1709, that his Counsel might be heard to two points in matter of law *.—The Lords taking notice of this request, and considering the Act of Union, come to no resolution upon it, but proceed, on the 21st, to declare what censure to pass upon him; which being settled, the Lords, on the 22d of March, send a message to the Commons, “That they are ready to give judgment in the case of Dr. Sacheverel, if they, with their Speaker, will come and demand the same.”

17. On the 15th of March, 1715, the Lords proceed, in Westminster Hall, to the trial of the Earl of Winton †, impeached of High Treason ‡.—On the 16th the Lord Winton making no material defence, the Commons reply.—The Lords adjourn to the House above, where §, the Bishop of Winchester having delivered

* One of these is, That the impeachment is by the Knights, Citizens, and Burgesses, “Commissioners of Shires and Boroughs,” in the name of themselves, and of all the Commons of Great Britain—but that the articles are only by the Knights, Citizens, and Burgesses—“which is neither agreeable to the impeachment, nor to the title of the House of Commons since the happy Union.”

† See this trial, and the proceedings against the Earl of Derwentwater, in the State Trials, Vol. VI. p. 1 and 17.

‡ In the course of the trial, on the 15th, the Lord Forester, a Peer of Great Britain, being produced as a witness, his Lordship, pursuant to an order of the Lords on the preceding day, came to the table, where a chair is placed for him.

§ It does not appear that, during this adjournment of the Lords from Westminster Hall to the House above, the Managers for the Commons returned to the House, or that the Speaker resumed the chair.

in a protestation for himself and the rest of the Bishops *, the Lords again adjourn to Westminster Hall, and the Lord High Steward demands the judgment of the Lords severally upon the Earl of Winton.—He is unanimously found guilty, and, being brought to the Bar, the Lord High Steward acquaints him therewith.

18. On the 27th of May, 1717, the Lords acquaint the Commons, by message, that their Lordships had appointed † the 13th of June for the trial of Lord Oxford ‡.

19. On

* It appears from the Lords Journals of the 15th and 16th of March, that several Bishops were present, in the House of Lords, on both the days of the trial; and that they did not ask leave to withdraw, till just before the Lords were about to be called upon to give their opinion of Guilty or Not guilty.—See before the note *, p. 189.

† The last proceeding that had been had before upon this impeachment was as long ago as on the 20th of September, 1715, when the replication of the Commons to Lord Oxford's answer is carried to the Lords, and the Lords address the King to give directions for preparing Westminster Hall for the trial.—An intermission of twenty months.—Lord Oxford petitions, on the 22d of May, 1717, complaining of this hardship, and that he had been a prisoner ever since the 9th of July, 1715. (a prorogation intervening.)—This petition is referred to a Committee, who, on the 25th of May, in pursuance of an instruction given them "to search, in the first place, for such precedents as relate to the continuance of impeachments from session to session, and from Parliament to Parliament," make a report of these precedents.—A motion is then made, "That it is the opinion of the House, that the said impeachment is determined by the intervening prorogation;" which is resolved in the negative.—See the protest upon this occasion; in which, amongst other reasons,

the protesting Lords say, "By the statute of the 4th of Edward III. no Commoner can be impeached for any capital crime." There is no such statute or Act of Parliament; they must therefore allude to the entry on the Rolls of Parliament, 4th Edward III. No 2 and 6, cited before in the note in p. 54, of this Volume.—Sir Matthew Hale, in the "Jurisdiction of the House of Lords," ch. 16. p. 92, says, "Some have thought this declaration of the 4th of Edward III. being done thus solemnly, in *pleno Parlamento*, was a statute or Act of Parliament.—But that seems not not so clear.—It was certainly as solemn a declaration by the Lords as could be made, less than an Act of Parliament; and is as high an evidence against the jurisdiction of the Lords, to try or judge a Commoner, in a criminal cause, as can possibly be thought of: (1.) Because done by way of declaration, to be against law; and, (2.) Because it is a declaration by the Lords in disavowance of their own jurisdiction; which commonly Judges chuse rather to amplify, if it may be, than to abridge."—But see the several references in this volume, to the proceedings of both Houses, on the impeachment of Blair, Vaughan, and others, for High Treason, in 1689; and also the case of Fitzharris, p. 200, with the note.

‡ On receiving this message, the Commons, on the 30th of May, appoint a Committee

19. On the 7th of June, 1717, the Lords come to several resolutions as to the mode of proceeding at the trial of Lord Oxford *.

20. On the 24th of June, 1717, the trial of Lord Oxford came on †.—The Commons, after opening the charge generally, were proceeding to make good the first article of impeachment, which was a charge of high crimes and misdemeanors, when the Lords adjourned to the chamber of Parliament ‡, and there resolved, “ That the Com-
mons be not admitted to proceed to make good the articles for
“ high

mittee to consider the state of the impeachment; who report, on the 12th of June, “ That, on account of the interruption for so many months, it will be necessary to review the evidence, and therefore impossible to be ready at the time appointed by the Lords.”—A message is sent to the Lords to this purport, and to desire the trial may be put off to a further day; to which the Lords agree.

* One of these resolutions, as reported from the Committee appointed to consider of the precedents, was, “ That the Counsel assigned to the Lord Oxford may be present when he is at the Bar, in order to be heard touching any point or matter of law, if any such shall arise upon the two articles of impeachment for High Treason; but that the said Earl may be allowed to make his full defence by Counsel, upon the articles for high crimes and misdemeanors, as well to matter of fact, as to any point or matter of law which may arise thereupon.”—The Earl of Clarendon acquainted the House, “ That some doubts arising in the Committee, by reason of the Act of, the 7th of William III. for regulating trials in cases of treason, and the standing order of the House of the 28th of May, 1624, touching judicature and the

allowance of Counsel in cases of moment; he was directed by the Committee to inform the House thereof, as a matter worthy of their Lordships particular consideration.”—Then the preamble of the said Act, and the said standing order, being read, it was proposed, as an amendment to this resolution, to leave out “ to be heard touching any point or matter of law, if any such shall arise upon the two articles of impeachment for High Treason; but;” and, upon question agreed, that these words should stand part of the resolution.”—See before, p. 268.

† See the speech of the Lord High Steward, in which he informs Lord Oxford of the directions the Lords had given, touching his Counsel being present, and that his witnesses are to be heard on oath, as well on the articles of High Treason, as those for high crimes and misdemeanors. The proceedings on this trial are printed in the 6th volume of the State Trials, p. 102.

‡ When the Lords adjourned to the chamber of Parliament, it appears that the Managers withdrew, and the Speaker resumed the chair in the House of Commons, and the House continued doing business till they received a message from the Lords, “ That their Lordships are now about going down into
“ Westminster

“ high crimes and misdemeanors, till judgment be first given on the articles for High Treason.”—This resolution is communicated to the Managers on their return to Westminster Hall *.

21. Whilst the dispute is depending between the two Houses touching the mode of proceeding on the articles against Lord Oxford, the Lords, after having refused a Free Conference, appointed the trial to proceed on the 1st of July, 1717; but the Lords having waited some time in Westminster Hall, and the Commons not appearing in order to make good their impeachment, the Lords resolve †, “ That Robert Earl of Oxford be “ acquitted of the articles of High Treason, and other high crimes “ and misdemeanors; and that the said impeachment shall be, and “ is hereby dismissed ‡.”

22. On

“ Westminster Hall.”—The House of Commons then again resolved itself into a Committee, for the purpose of going to Westminster Hall.

* Upon this resolution of the Lords, the Managers objected, and insisted upon the right of the Commons to proceed in their own method in maintenance of the articles exhibited by them.—The Commons, on the 25th of June, appoint a Committee to search precedents; who report, on the 27th.—The substance of this they resolve to communicate to the Lords at a Conference.—What passed at these Conferences, which were held on the 27th and 28th of June, is inserted in the Appendix to this Volume, N^o 13.—The Commons, on the 29th of June, desire a Free Conference; to which, on the 1st of July, the Lords answer by message, “ That the subject-matter of the last Conference being concerning a point of judicature, determined by their Lordships, after the trial began, their Lordships do not think fit to give a Free Conference on the subject-matter of

“ the last Conference, as desired by the Commons.”—See in the Appendix the further proceedings upon this question.

† See in the Lords Journal of the 1st of July, their mode of proceeding to this question, and the proclamation made upon their going back to Westminster Hall.—The Commons, previously to the Lords message, “ That “ they intend presently to proceed on the “ trial,” resolve, “ That this House doth not “ acquiesce in the proceeding on the trial of “ Robert Earl of Oxford, in the manner prescribed by the Lords.”

‡ It is an anecdote, now generally believed, “ That, though this dispute between the two Houses (which articles should be first proceeded on) was the ostensible cause for dismissing the impeachment against Lord Oxford, the real cause was, a letter or paper, signed by the Duke of Marlborough just before Queen Anne’s death, which shewed his connection, at that time, with the abdicated family; and which letter Lord Oxford had in his possession.”—In the notes to the article, *Churchill*, in.

22. On the 26th of April, 1725, the Lords appoint the trial of the Earl of Macclesfield at the Bar* of the House of Lords, and send a message to the House of Commons to this effect, “and that their Lordships will order conveniencies to be prepared there for the Managers of the said impeachment.”—And the Clerk of the House of Lords is authorized to issue summonses for such witnesses as shall be desired by the said Earl †.

23. On the 1st, 3d, and 4th of May, 1725, the Lords make several rules and regulations touching the places of the Lords, and wearing their robes, “and where the impeached Lord is to sit uncovered ‡,” some of which are communicated by message to the Commons on the 5th of May.

24. On the 6th of May, 1725, the trial began §; before the Managers go up, the Commons resolve, “That the Managers be at liberty to proceed in such manner, and upon such articles, as they shall think most important for expediting the trial ||.”

in the new *Biographia Britannica*, Vol. III. p. 562, this anecdote is very well authenticated from the late James West, Esq.

* See in the Journal the protest of some Lords against holding this trial at the Bar of the House of Lords, and not in Westminster Hall.—The Commons, on the 27th of April, appoint a Committee to search precedents, touching proceedings on impeachments at the Bar of the Lords, who report on the 5th of May.

† The proceedings at large, on the trial, are printed in the *State Trials*, Vol. VI.

‡ See before, p. 208, the dispute, which arose between the two Houses, on the subject of an order made by the Lords, in the case of the Lord Viscount Mordant, in the year 1666,

respecting the place and manner in which he should sit during his trial.

§ The Commons, on the 5th of May, 1725, having read, out of their Journal of the 16th of January, 1702, their proceedings on going to a Free Conference with the Lords, resolve, “That whilst the Committee appointed to manage the evidence against Lord Macclesfield are at the House of Lords proceeding on the said trial, this House will remain in the same state as they are in, when there is a Conference between the two Houses.”

|| When any objection was taken at the Bar, pending the trial, all parties concerned were directed to withdraw.—See the 7th, 12th and 13th of May.

25. On the 24th of May, 1725, the Lords, after the trial of Lord Macclesfield is concluded, and before they agree upon the form of the question to be put, of Guilty, or Not guilty—come to a resolution, “That the Commons have made good their charge of “high crimes and misdemeanors against Thomas Earl of Macclesfield.”

26. On the 25th of May, 1725, the question, “Guilty or Not guilty?” is put severally to the Lords, in the presence of the Managers; and, on the 26th, Lord Macclesfield “attends at “the Bar,” pursuant to an order of the Lords; where the Managers being come, the Speaker of the House of Lords acquaints Lord Macclesfield, that the Lords had unanimously found him guilty*.

27. On the 26th of May, 1725, after Lord Macclesfield has been found guilty, and he offering nothing in arrest of judgment, the Lords proceed to the consideration of what judgment to give upon the impeachment†.

28. On the 9th of March, 1746, the trial of Lord Lovat came on in Westminster Hall‡.—After the Court is formed, the articles, and
Lord

* Lord Macclesfield, proceeding to mention some circumstances in mitigation of his crimes, is interrupted by the Managers, as being irregular, “his Lordship not offering “any thing in arrest of judgment.” The Earl and Managers being withdrawn, he is ordered to be committed to the custody of the Black Rod.

† See in the Journal the several questions that were put upon this occasion, and the protests thereupon.—It is resolved, “That the “said Earl be fined £. 30,000.”—He is ordered to be committed prisoner to the Tower till he has paid the said fine. There is no en-

quiry, by a Committee, as there was in the case of Goudet and others, (which see before, p. 260.) into the particular value of the estate of Lord Macclesfield.

‡ Neither Frederick Prince of Wales, or William Duke of Cumberland attended this trial as Peers.—On the trial of Lord Byron, upon an indictment for murder, in the procession to Westminster Hall, on the 16th of April, 1765, the Lord Chancellor gave the precedence, in rank, to the King’s brothers the Dukes of York and Gloucester; but on the same day, after the Lord High Steward’s commission had been read, on the return to the

House

Lord Lovat's answer, and the replication, are read; and then the Lord High Steward addresses the prisoner *.

29. On the 10th of March, 1746, whilst the Lords are adjourned to the Chamber of Parliament, to consider of an objection taken by Lord Lovat's Counsel to a witness †, the Managers did not go from the Bar.—But on the 18th of March, the Lords having adjourned, and being ready again to proceed, but understanding that the Commons were returned from the Court below to their own House, send a message to the Commons, “ That the Lords are ready to go down to proceed farther in the “ trial.”

30. On the 16th of March, 1746, Lord Lovat having requested that Mr. M'leod, a Member of the House of Commons, might be examined as a witness, the Lords send a message to the Commons, to desire that they will give leave to Mr. M'leod to be examined; which is granted accordingly.

House of Lords, “ the Lord High Steward” took place of the Duke of York.—On the next day, the 17th of April, it appears from the Lords Journal, that, when the commission was dissolved, in the procession back from Westminster Hall to the House of Lords, the Dukes of York and Gloucester had again the precedence, in rank, above “ the Lord Chancellor.” But see before in the note † in p. 212 of this volume, a different proceeding on the trial of Lord Stafford, in the instance of Prince Rupert, Duke of Cumberland.

* In the course of this speech, Lord Hardwicke says, “ your Lordship cannot entertain “ the least doubt of a just and impartial trial, “ where the law of the land, and the custom “ and usage of Parliament (an essential part of “ that law) constitute the rule of proceeding.”

† The debate and resolution upon this question, on the admissibility of evidence, was in the Chamber of Parliament, and not in Westminster Hall: and the determination was ordered to be communicated to the Commons by the Lord High Steward. It appears from the Lords Journal of the 10th of March, that the Lords thought themselves competent to determine this question, without referring it to the Judges for their opinion.—Soon after the trial of Lord Lovat was finished, on the 4th of May, 1747, a Bill was ordered in in the House of Commons, *Nemine contradicente*, For allowing persons impeached of High Treason, to make their full defence by Counsel.—See this Statute, the 20th Geo. II. ch. 30.

31. On the 18th of March, 1746, the evidence against Lord Lovat being closed *, he is called upon to make his defence; but desiring further time for witnesses to appear, the Managers for the Commons were heard in objection, and to sum up by way of reply †. —The Lords then adjourn to the Chamber of Parliament, and there resolve ‡, “to go down again to Westminster Hall, and there proceed to give their opinions, Guilty, or Not guilty §;” which proceeding is had accordingly, the Managers for the Commons being present.—And Lord Lovat being unanimously found Guilty, he is brought to the Bar, and the Lord High Steward acquaints him therewith.—And then the Lords adjourn to the Chamber of Parliament, where they resolve to proceed, the next day, to the giving of judgment; and they acquaint the Commons of this by message.

* The Commons closed their evidence on the 16th of March, when Sir John Strange, one of the Managers, was heard at large to sum up the same; but on the 18th, Lord Lovat declining to call witnesses, Mr. Murray, Solicitor General, another of the Managers, who was assigned to close the proceeding, was fully heard by way of reply.

† The proceeding, from the Lords Journal of the 16th of March, 1715, in the case of the Earl of Winton, was read.

‡ The Lords, neither in Lord Lovat's or Lord Winton's case, come to any prior resolution, “That the Commons had made good their charge;” as they had done in the instances of Dr. Sacheverel and Lord Macclesfield; these were both cases of impeachments for “high crimes and misdemeanors,” and not for a capital offence.

§ Before they go down, the Archbishop of York for himself and the rest of the Bishops, delivered in a protestation, which is read, “saving to themselves and their successors all such rights in judicature as they have by law, and of right ought to have;” and desiring leave to be absent from the judgment, and to withdraw.—Leave is accordingly granted.—It appears from the Lords Journals, that the Bishops had attended, through the course of the trial, to this stage; and had consequently voted in all the previous questions, particularly, on the 10th of March, on the admissibility of a witness. In the list read over by the Clerk on the 9th of March, of the names of the absent Lords, it appears that only seven Bishops were absent; nineteen were present.

VI. *Commons demand Judgment.*

1. **T**HE Lords, in the case of Goudet and others, who had pleaded Guilty to the impeachments of the Commons for high crimes and misdemeanors, having appointed a Committee to inform themselves of the particular value of the estates of the said several persons, receive from that Committee a report on the 2d of July, 1698; the Lords then resolve on the punishment; and send a message to the Commons, on the 4th of July, "That they are ready to give judgment, if the Commons, with their Speaker, will come and demand it."—The Commons, on receiving this message, resolve, "That they will go up and demand judgment *."

2. The Lords having, on the 21st of March, 1709, † determined, after debate, and several questions, what censure to pass upon Dr. Sacheverel,

* See, in the Journals of the Lords and Commons, the form of the Commons demanding, and the Lords pronouncing, judgment upon this occasion.

† On the same day, the 21st of March, the Commons resolve, to thank the Managers of the impeachment, for their faithful management in the discharge of the trust reposed in them. See in the 8th vol. of the State Trials, p. 547, a summary of the debate on this question. It was, amongst other arguments against thanking the Managers, urged, That there was but one instance of such a proceeding, viz. The thanks given to Sir Heneage Finch, Attorney General, for his maintaining the rights and privileges of the House of Commons, in 1671, against the Lords. Another in-

stance might have been found, and one more applicable to this case, viz. On the 25th Nov. 1640, when Mr. Pym was thanked "for his well delivery of the charge against the Earl of Strafford." And another on the 14th of January, 1640, where the House return thanks to Mr. St. John, Mr. Whitlocke, Lord Falkland, and Mr. Hyde, "for the great service they have performed, to the honour of this House, and good of the Commonwealth, in the transferring the business of Ship Money, and the other matters concerning the liberty and property of the subject, and the articles against the late Lord Keeper Finch."—See also in Grey's Debates, Vol. III. p. 283, the thanks of the House, given by the Speaker, on the 8th of June, 1675, to Sir John Robinson, a Member

Sacheverel, who had been found guilty of high crimes and misdemeanors, upon the impeachment of the Commons, send a message to the Commons, on the 22d, "That they are ready to give judgment, if the Commons, with their Speaker, will come and demand the same."—Upon the receipt of this message, the Commons resolve, "That this House will demand judgment of the Lords against Dr. Henry Sacheverel."—And, on the 23d of March, they send a message to the Lords, "That this House, with their Speaker, do intend immediately to come to the House of Lords, to demand judgment; which they do accordingly *."

3. On the 20th of January, 1715, as soon as the message from the Lords is delivered, That several of the Scotch Lords impeached had pleaded guilty to the articles of impeachment exhibited against them, the Commons resolve, *nem. con.* (1.) "That this House will

a Member for the city of London and Lieutenant of the Tower, in his place, "for having, like a worthy person and trusty Commander, done his duty in obeying the orders of the House."

* When the Speaker (Sir Richard Onslow) went up with the House to demand judgment against Dr. Sacheverel; as the Mace was going into the House of Lords before the Speaker, the Black Rod endeavoured to hinder it, by putting his Black Rod cross the door; on which the Speaker said, "If he did not immediately take away the Black Rod, he would return to the House of Commons."—The Black Rod desired him to stay a little, and he would acquaint the Lords. The door was shut, and Mr. Speaker and the House staid without.—After a little time the door was opened, and Mr. Speaker, with the Mace, went in.—As Mr. Speaker was going to the Bar, the Black Rod attempted to interpose himself between the Speaker and the Mace; upon which the Speaker said aloud, "My Lords, if you do not immediately or-

der your Black Rod to go away, I will immediately return to the House of Commons." Then Lord Chancellor Cowper directed the Black Rod to go from thence. Then Mr. Speaker, with the Mace, went up to the Bar.—The Black Rod was then ordered to bring the prisoner; and the Black Rod was going to put him on the right hand of Mr. Speaker; who, upon that said, "If you don't order the Black Rod to go with the prisoner on the left hand of me, at some distance, I will return to the House of Commons."—Upon which the Lord Chancellor directed the Black Rod so to do; and then Mr. Speaker demanded the judgment, and the Lord Chancellor accordingly pronounced sentence upon the prisoner, kneeling at the Bar.—Mr. O.

There is a memorandum to this purport entered in the Journal of the House of Commons, 23d March, 1709; but no mention is made of this transaction in the Lords Journal.

" demand:

“ demand judgment against them ; and (2.) That * to-morrow morning this House will, with Mr. Speaker and the Mace, go up to the Bar of the Lords House, and, in the name of the knights, citizens, and burgesses in Parliament assembled, and of all the Commons of Great Britain, demand judgment against the said Lords.”—On the 23d of January, the Commons send a message to the Lords, that they do intend immediately to come to demand judgment ; and therefore desire, That the Painted Chamber and passages may be cleared.—The Speaker, with the House, go up ; and Mr. Speaker reports, “ That he, in the name of the Commons, &c. had demanded judgment †.”

4. On the 28th of January, 1715, the Lords (after a report from a Committee appointed to consider of the forms and methods of proceeding to judgment against the impeached Lords) resolve to address the King to constitute a ‡ Lord High Steward ; and also, that he will be pleased to order the guards to attend on the day the House shall give judgment §.

5. On the 2d of February, 1715, the Commons receiving a message from the Lords, That their Lordships had appointed to give judgment on the impeached Lords on the 9th of February, resolve, “ That they will be present as a Committee of the

* This, on the next day, the 21st, is altered to Monday the 23d of January.

† As soon as the Speaker, with the House of Commons, were withdrawn from the House of Lords, the Lords resolve to go into a Committee, the next day, to consider of the forms and methods of proceeding to judgment in a case of such nature as that of the Lords who have pleaded guilty.—They report on the 28th of January.

‡ See, in the Lords Journal of the 28th of January, the form of this commission, as prepared by the Judges.—It amongst other

things, recites, “ Nos considerantes quod J. Comes de Derwentwater, &c. secundum legem et consuetudinem hujus Regni nostri Magnæ Britanniae, et “ secundum consuetudinem Parliamenti” audiantur, sententientur et adjudicentur, ac pro eo quod Proceres et Magnates nobis humillime supplicaverunt ut Seneschallum Magnæ Britanniae pro hac vice constituere dignaremur.”

§ Several other forms and resolutions are adopted in the report, which see in the Lords Journal of the 28th and 31st of January.

“ whole

“ whole House when the Lords give judgment against the said
“ Lords *.”

6. On the 7th of February, 1715 †, the impeached Scotch Lords being to receive judgment on the 9th, and the House of Lords having made an order, That if any thing is offered in arrest of judgment they may be heard by their Counsel—the House of Commons make an order, “ That the Committee of Secrecy be appointed
“ Managers on behalf of the Commons ‡, in case any thing shall
“ be offered in arrest of judgment on the behalf of the six im-
“ peached Lords.”

7. On the 9th of February, 1715, previously to the six impeached Lords receiving judgment, the Archbishop of Canterbury, for himself and the rest of the Bishops, delivered in a protestation for leave to be absent, and saving their rights in judicature § ; which is accordingly granted.—The Lords then proceeded to read the commission of the Lord High Steward, and adjourned to Westminster Hall ; where the impeached Lords having nothing to offer in arrest of judgment, the Lord High Steward pronounced judgment accordingly ||.

8. On

* On the 3d and 7th of February, the Commons give directions about their seats in Westminster Hall, and their manner of going thither.—See, on the 9th of February, the form of the Managers and House being called over, in order to their being present at the said judgment.

† See, in the Commons Journal of the 7th of February, Mr. Lechmere's report from the Committee, appointed to examine the Lords Journal, touching the form of the Lord High Steward's Commission, as compared with the Commission in the case of Lord Stafford.

‡ No Managers had been previously ap-

pointed, as, the impeached Lords having pleaded guilty, there had been no trial.

§ See this protestation in the Lords Journal.

|| In the course of his speech Lord Cowper says, “ Though one of your Lordships, in the
“ introduction to his plea, supposes this im-
“ peachment to be out of the ordinary and com-
“ mon course of the law and justice, it is yet as
“ much a course of proceeding, “ according to
“ the common law,” as any other whatsoever.
“ —If you had been indicted, the indictment
“ must have been removed and brought before
“ the House of Lords, the Parliament sitting:
“ —In that case you had been accused ('tis
“ true).

8. On the 17th of March, 1715, the Lords send a message to the Commons, That they intend to proceed to judgment on the Earl of Winton on the 19th.—The Commons resolve, “ That they will
 “ be present as a Committee of the whole House, when the Lords
 “ shall proceed to judgment.”—And also resolve, *nem. con.* “ That
 “ the Managers for the Commons be impowered, in case the House
 “ of Lords shall proceed to judgment before the same is demanded by
 “ this House, to insist upon it, that it is not parliamentary for their
 “ Lordships to give judgment until the same be first demanded by
 “ this House.”

9. On the 19th of March, Lord Winton, being asked, before the Lords proceeded to judgment, whether he had any thing to move in arrest of judgment, said, “ That he was not such a person
 “ against whom judgment for High Treason ought to be pro-
 “ nounced*.”—The Lords adjourn to the House above, and determine this to be a matter of fact and not of law; and that he is such a person, against whom judgment for High Treason ought to be given.

10. On the 19th of March, 1715, Lord Winton being asked again, after his first objection had been over-ruled, whether he had any thing to offer, why judgment should not pass, objects, “ That
 “ the impeachment is insufficient, for that the time of committing

“ true) by the Grand Jury of one county: In
 “ the present, the whole body of the Commons
 “ of Great Britain, by their representatives,
 “ are your accusers.”—On the 22d of November, 1717, the Earl of Carnwarth and Lord Widdrington, upon their knees, at the Bar of the House of Lords, pleaded the benefit of the Act of general pardon; which was allowed them.

* Sir Constantine Phipps, one of Lord Winton's Counsel, attempting to speak to this

point, the same was objected to by the Managers for the Commons; and he continuing to speak, though interrupted by the Lord High Steward, the Lords direct the Lord High Steward to reprimand Sir Constantine Phipps “ for having begun to speak without
 “ any point of law stated, or leave given by
 “ the Court to speak.”—And, upon the Lords return to Westminster Hall, the Lord High Steward reprimands Sir Constantine Phipps accordingly.

"the High Treason is not laid with sufficient certainty."—His counsel are heard, and some of the Managers, to this point, and also in reply; when the Lords adjourned to the House above; and the Speaker and the House of Commons then came, and, at the Bar of the House of Lords, demanded judgment against the said Earl *, and they being withdrawn, some questions are put to the Judges, to which they give an answer †; and then the Lords resolve, "That—

* This was in consequence of a resolution of the same day, the 19th of March, "That this House will immediately go, with their Speaker and the Mace, to the Bar of the House of Lords, and demand judgment of High Treason against the Earl of Winton, upon the impeachment of the Commons."

† The objection made in arrest of judgment was, "That the impeachment is insufficient, for that the time of committing the High Treason is not therein laid with sufficient certainty."—The questions put to the Judges, for their opinion, were,

(1.) "Whether, in indictments for treason or felony, it be necessary to allege some certain day upon which the fact is supposed to be committed; or, if it be only alleged in such indictments that the crime was committed on or about a certain day, whether that would be sufficient?"

To this question they answer, "That it is necessary that there be a certain day laid in such indictments, on which the fact is alleged to have been committed; and, that the alleging in such indictments, that the fact was committed on or about a certain day, would not be sufficient."

(2.) The next question was, "If a certain day ought to be alleged, when the fact is supposed to be committed, whether it be necessary, upon the trial, to prove the fact to be committed on that day?"

To this the Judges answer, "That although a day certain, when the fact is sup-

posed to be done, be alleged in such indictments, yet it is not necessary, upon the trial, to prove the fact to be committed upon that day; but that it is sufficient, if proved to have been done on any other day before the indictment found."

The Lords then resolve, and direct the Lord High Steward to acquaint the prisoner at the Bar, in Westminster Hall, "That the Lords have considered the matters moved in arrest of judgment, and are of opinion, That they are not sufficient to arrest the same; but that the impeachment is sufficiently certain in point of time, according to the forms of impeachments in Parliament." It appears from the articles of impeachment, which are entered in the Lords and Commons Journals of the 9th, of January, 1715, that the greater part of the facts charged are laid to be committed "on or about the months of September, October, or November, last;" and, "that the taking the town of Preston, and the battle there, was laid to be done on or about the 9th, 10th, 11th, 12th, or 13th of November last."—The objection arising from this want of precision would, if the proceeding had been by way of indictment, (and tried according to the rules of the Courts below) and not by impeachment, (and therefore to be tried according to the law and usage of Parliament) have been sufficient, according to the opinion of the Judges, to arrest the judgment. The substance of the arguments on this question, as urged by the Managers, ap-

pears.

“ That the matters moved in arrest of judgment, are not sufficient to arrest the same.”—The Lords return to Westminster Hall, where (the Commons being present) the Lord High Steward pronounces judgment.

11. On the 27th of May, 1725, Lord Macclesfield having been found guilty, and the Lords having agreed, that he should be fined £. 30,000 *, they send a message to the Commons to acquaint them, “ that their Lordships are ready to give judgment † against the Earl of Macclesfield, if the Commons, with their Speaker, will come and demand the same.”—The Commons immediately resolve, “ That they will demand judgment,” and send a message to the Lords to this effect ‡.

12. On the 18th of March, 1746, the Commons, on receiving a message from the Lords, that their Lordships will proceed to-morrow, to the giving of judgment against Simon Lord Lovat, resolve, *Nemine contradicente*, “ That the Managers be impowered, in case the House of Lords shall proceed to give judgment before the same is demanded by this House, to insist upon it, That it is not parlia-

pers in the State Trials, Vol. VI. p. 52, in which Mr. Cowper says, “ This question is to be determined by the usage and practice of the High Court of Parliament; and Lord Winton’s Counsel cannot but know, That the usages of Parliament are part of the law of the land, although they do differ in many instances from the Common Law, in point of form, as practised in the inferior Courts.”

* It does not appear, that the Lords directed any enquiry to be made into the value of Lord Macclesfield’s fortune, by which the quantum of the fine might be regulated; as they had done, in the year 1698, in the case of

Goudet and others.—See before, p. 260.

† See, in the Journals of the Lords and Commons of the 27th of May, the form of this proceeding, of the Speaker’s going, with the Mace, to the Bar of the House of Lords, and demanding judgment there.

‡ Before the Commons go up, with the Speaker, to demand judgment, they resolve, *nem. con.* “ That the thanks of the House be given to the Managers, for their faithful management in the trust reposed in them.”—The speech of the Speaker, upon this occasion, is ordered to be printed, and is inserted in the Journal of the 27th of May.

“mentary for their Lordships to give judgment until the same be
“first demanded by this House *.”

* See, on the 19th of March, the form of the Commons demanding judgment in the House of Lords, and of judgment being pronounced in Westminster Hall by the Lord High Steward.—In the Appendix to the State

Trials, Vol. X. p. 188, there are published several proceedings relating to Lord Lovat, with a curious account of his behaviour, whilst in the Tower, and at the place of execution.

VII. *Bills of Attainder.*

1. **O**N the 20th of June, 1689, a Bill was ordered * for attainting several persons of High Treason, who are now in Ireland, or in other parts beyond the seas, adhering to their Majesties enemies, and who shall not return into England by a certain day.—This Bill passed the House of Commons on the 11th of July.—On the 2d of August, the Lords desire to know the names of the witnesses who gave evidence against the persons attainted by the Bill.—These names are communicated to the Lords at a Conference, on the 5th of August.—On the 20th of August the Lords return the Bill, with a great number of amendments; which the Commons are prevented, by the close of the session, from taking into consideration.

2. On the 22d of October, 1690, a Bill is ordered in, for attainting the persons that are or have been in rebellion, in England or Ireland, and for confiscating their estates, and for applying the same to bear the charge of the war †.

3. The King having ordered several papers and informations to be laid before the House of Commons, on the 6th of November, 1696, the same are read, and Sir John Fenwick is immediately

* It does not appear from the Journal, that this Bill, when ordered to be brought in, was grounded on any previous information, or examination of witnesses, but upon the notoriety of the facts alone.—On the 4th of August, Mr. Serjeant Trenchard acquaints the House (for the purpose of informing the Lords) with

the names of those who gave evidence at the Bar, and in the Committee, against the persons named in the Bill.

† This Bill passed the House of Commons on the 23d of December, but was never returned from the Lords.

ordered to be brought from Newgate.—He is accordingly brought to the Bar, and, being called upon to make a discovery, which he refuses to do, the House resolve, “ That a Bill be brought in to attain Sir John Fenwick of High Treason *.”

4. On the 24th of March, 1696, a Bill is ordered in for recovering the person of Hannah Knight, an infant; and to disannul the pretended marriage of the said infant, and to attain one Passmore of felony for taking away the said infant, if she don't produce and deliver her up by a certain time †.

5. On the 2d of January, 1701, resolved, *nem. con.* in the House of Commons, That a Bill be brought in for the attainder of the pretended Prince of Wales ‡.—It passed the House of Commons on

* The proceedings upon this Bill, the arguments of Counsel for and against the Bill, and the debates in the House of Commons, are collected, and published in one volume in 1698. They are also printed in the 5th volume of the State Trials, p. 40.—The Bill passed the House of Commons on the 25th of November.—Before the Bill is read in the House of Lords, they resolve, on the 1st of December, “ That there shall be no use made of “ proxies, in any case relating to this Bill;” and the Lords, every day that any step is taken in the Bill, make an order, That the House shall be called over on that day, before it rises, and absent Lords taken into custody.—The Lords having heard Counsel and witnesses for and against the Bill, it is read a second time on the 18th of December; not referred to a Committee, but ordered to be read a third time; and is read a third time, and passed, on the 23d of December.—It appears from the Lords Journals, that the Bishops attended and voted upon all the several parts of this proceeding, and upon the passing of the Bill, “ though in a matter of blood.”—See,

in the State Trials, Vol. X. Appendix, p 63, a list of the Lords who voted for and against this Bill.—It was carried 66 to 60.—Sir John Fenwick was executed on the 28th of January, 1696–7.

† At the Committee on the Bill, evidence is produced of this whole transaction: the Bill is reported on the 7th of April, and passed the Commons on the 9th of April; at which time, by alterations in the Committee, it is reduced to be a Bill “ for annulling the marriage, and directing the guardianship, of “ the said Hannah Knight.”

‡ James the II^d. died on the 6th of September preceding—and the young Prince was acknowledged by the French, and had been by them proclaimed King of England at St. Germain's.—See in Macpherson's State Papers, Vol 1. p. 589, 591, the character of King James; with an account of the manner of his death, by Sir David Nairne, who was present.—The King, on his death-bed, with great formality, bequeathed the British throne to his Son, and appointed his Queen to be Regent during the minority.

§ Bishop Burnet says, he died on the 6th of September, 1701; Sir David Nairne says, on the 16th.—This difference arises from the difference between the Old and New Style.

the 15th of January *.—On the 23d, it was returned from the Lords, with amendments, which extended the attainder to Mary †, wife of the late King James ‡.—To these amendments the Commons disagree

* By an Act, passed in the year 1708, the 7th of Queen Anne, ch. 21, sect. 10, it is enacted, "That, after the decease of the Pretender, no attainder for treason shall extend to the disinheriting of any heir; nor to the prejudice of any person, other than the offender, during his life." By the 17th of Geo. II. ch. 29. sect. 3, it is declared, "That this provision shall not take effect, until after the decease, not only of the said Pretender, but of his eldest and every other son." See a very ingenious treatise, written whilst this Bill was depending in 1744, by the late Lord Chancellor, Charles Yorke, then a very young man, intitled, "Considerations on the Law of Forfeitures."—Cicero, in discussing this question, says, "Nec vero me fugit, quam sit acerbum, parentum scelera filiorum poenis lui: Sed hoc præclare legibus comparatum est, ut caritas liberorum amiciores parentes reipublicæ redderet." Epist. ad Brutum, editio Olivet, N° 12. p. 112. And again, in another letter, writing about the same decree, which, at Cicero's motion, had passed against Lepidus, and which confiscated all his fortune, he says, "In qua sententia, videtur illud esse crudele; quod ad liberos, qui nihil meruerunt, poena pervenit. Sed id, et antiquum est, et omnium civitatum." E. iust. ad Brutum, N° 15. p. 118.—In the 2d vol. of the History of the Life of Henry II. p. 528, Book 3d. Lord Littleton mentions an instance, where this penalty was extended to the banishment, and confiscation of the goods and chattels, "of the kindred of the offender, and of all who belonged to them, of whatsoever degree, order, sex, or condition they might be."—A most iniquitous and cruel proscription of innocent persons! And as Lord Littleton properly terms it, "entirely repugnant to natural justice."

† Bishop Burnet, in his History, Vol. II. p. 297, says, "That the Lords extended this attainder to the Queen, because she acted as Queen Regent for her Son; but it was much opposed; for no evidence could be brought to prove that allegation; yet the thing was so notorious, that it passed, and was sent down to the Commons." It appears from Macpherson's State Papers, "That the Queen, as Regent, and her Council had published a declaration, setting forth the pretensions of the Prince of Wales after the death of his father," and that this manifesto had been printed in French, English, and Latin.—Vol. I. p. 600.

‡ On the 24th of January, the Commons appoint a Committee to search precedents with relation to beginning of Bills of Attainder in either House.—On the 26th, the Committee are empowered to search the Lords Journals upon the same matter.—And, on the 29th, they report, "That they had inspected the Journals of both Houses; and that they find more Bills of Attainder begun in the House of Lords than in the House of Commons; but that they do not find any instance of any person being attainted by way of amendment to any Bill."—On the 6th of February, the Commons assign their reason for disagreeing to these amendments—"That they believe it may be of dangerous consequence to attain persons by an amendment only; in which case such due consideration cannot be had, as the nature of an attainder does require."—To this the Lords, at a Conference, on the 10th of February, reply, "That due consideration, such as the nature of an attainder does require, may, in their opinion, be had, when the attainder comes in by way of amendment.—And the Lords find, that the Commons themselves did, by way

agree on the 2d of February; and, on the 12th of February, after a Free Conference, the Lords do not insist on their amendments.

6. On the 9th of August, 1715, the Commons, having impeached Lord Bolingbroke, and receiving a message from the Lords, That, after a diligent search and enquiry, the said Lord Bolingbroke was not to be found *, so that he might be attached, immediately resolve, “ That leave be given to bring in a Bill to “ summon Lord Bolingbroke to render himself to justice by a day “ therein to be limited, or in default thereof to attain him of High “ Treason †.”

7. On the 18th of August, 1715, a motion was made, and a question put in the House of Lords, That it be an instruction to the Committee to whom the Bill for attainting Lord Bolingbroke was committed, That they do enquire into, and report to the House, “ Whether Henry Lord Bolingbroke hath been summoned, and in “ what manner ;” but resolved in the negative ‡.

8. On the 18th of August, 1715, after the second reading of the Bill of Attainder against the Duke of Ormond in the House

“ way of amendment, add the names of several persons to be attainted, in an act of the 31st of Henry VIII. sent from the Lords for attainting the Marquis of Exeter; and “ they have never heard of any ill consequence by that proceeding.”—Notwithstanding these reasons, the Lords, convinced by what passed afterwards at a Free Conference, on the 12th of February, do not insist upon their amendments; and, on the 20th, send down to the House of Commons a separate Bill for attainting Queen Mary, which I do not find was ever even read a first time.—It certainly did not pass.

* Lord Bolingbroke, in his Letter to Sir William Wyndham, p. 36, explains the reasons

which induced him to take the resolution of leaving England, “ not in a panic terror, improved by the artifices of the Duke of Marlborough, whom I knew, even at that time, “ too well, to act by his advice or information “ in any case; but on such grounds, as the “ proceedings which soon followed sufficiently “ justified.”

† See a similar proceeding, and a Bill of Attainder ordered in against the Duke of Ormond, on the 10th of August.—These Bills passed the House of Commons on the 15th and 16th of August.

‡ See the protest in the Lords upon this occasion.

of Lords, a petition is presented from the Ducheſs, ſtating, “ That her husband being beyond ſea, the uncertainty of finding him out, and the difficulty of giving him notice to ſurrender ſo ſoon as the 10th of September, are ſo great, ſhe prays the Houſe will give him a larger time to ſurrender *.”—The Houſe order the petition to lie upon the table; and immediately reſolve, “ For the ſafety of his Maſteſty’s perſon and government, that they will this day proceed further in the ſaid Bill.”—They accordingly go into a Committee—report the Bill without amendment—read it a third time, and paſs it on the ſame day the 18th of Auguſt †.

9. On the 17th of January, 1715, the Commons having examined two witneſſes at the Bar, touching the Earl of Mar, and ſeveral other Lords, who were at that time in open rebellion in North Britain, reſolve, *nem. con.* That a Bill be brought in to attain the ſaid Lords of High Treason.—The Bill paſſed the Houſe of Commons on the 26th of January.—On the 31ſt of January the Lords examine witneſſes on the ſecond reading of the ſaid Bill, and it received the royal aſſent on the 17th of February ‡.

* Upon reading this petition, the Lords order the Aſt for attainting Thomas Dolman and others, in the 17th of Charles II. to be read.—See before in this volume, p. 222.

† On the 20th of Auguſt this Bill, and the Bill for the attainder of Lord Bolingbroke, receive the royal aſſent, ſignified by *Le Roi le veut*.—And, on the 13th of September, notice being taken in the Houſe of Lords, “ That the names of the Duke of Ormond and Lord Bolingbroke, attainted by Aſt of Parliament of High Treason, unleſs they rendered themſelves to juſtice by the 10th of September, ſtill remained in the roll of Peers “ delivered in by Garter King at Arms,” the Houſe order the Lieutenant of the Tower, or his deputy, to attend the next day, to give an account whether either of thoſe Lords had ſur-

rendered.—On the 14th of September, the Deputy Lieutenant of the Tower, and the Black Rod, being examined, and acquainting the Houſe that neither the Duke of Ormond or Lord Bolingbroke had ſurrendered, the Lords order, “ That the Earl Marſhal of England do cauſe the names of the ſaid Duke of Ormond and Lord Bolingbroke to be razed out of the roll of Peers in this Houſe; and likewiſe out of all books and liſts in the Heralds Office, wherein either of their names are inſerted ”—On the 17th of September, *Norrey* King at Arms, authoriſed by warrant from the Deputy Earl Marſhal of England, executes the former part of this order at the table of the Houſe of Lords.

‡ The royal aſſent to this Bill is *Le Roi le veut*.

10. On the 21st of March, 1715, Mr. Secretary Stanhope acquainted the House, That there were several persons at the door, who could give an account, what persons of distinction had been in arms in Scotland on the part of the rebels.—They were severally called in and examined, and gave the House an account, that they had seen * Earl Marischal, Earl of Seaforth, Earl of Southesk, and Earl of Panmure, in arms, on the part of the rebels.—The House order “ a Bill to be brought in to attain the said “ Lords, if they render not themselves to justice by a day to be “ therein limited †.”

11. On the 24th of May, 1716, the House being informed, that Thomas Forster ‡ and William Macintosh, who were committed, and indicted for High Treason, had made their escape, and that persons attended at the door who were witnesses of the treason—the copy of their indictment was read, and two witnesses examined; and then § a Bill is ordered to attain them of High Treason.

12. On

* Earl Marischal fled beyond sea, and resided at Berlin and other foreign Courts 45 years; when having received his Majesty's pardon in 1759, and a Bill having passed, to remove any disability in him to inherit by reason of his attainder, he returned in the summer 1760.

† When this Bill is ordered, on the 20th of April, 1716, to be read a second time in the House of Lords, they make an order, “ That “ such persons as were examined as witnesses “ before the House of Commons, in relation “ to the said Bill, do then attend.”—The Bill was read a second time on the 27th of April.—The witnesses were then examined at the Bar, and then the Bill was committed.—See in Comyns's Reports, p. 440, the case of Kennet Lord Duffus, who was included in this Act, and was coming over to surrender himself; but being taken into custody at Hamburgh, by the King's minister there, was detained till after the last day of June, 1716, the day fixed for the parties to render themselves. Chief

Justice Eyre and Chief Baron Comyns were of opinion, that this was not a compliance with the Act of Parliament. Lord Chancellor Talbot and Lord Hardwicke approved of this opinion.—Several of the Lords, who had been impeached and convicted on account of this rebellion, and were under sentence of death (viz. the Lords Carnwarth, Widdrington, and Nairn,) claimed the benefit of the Act of grace and free pardon which passed on the 15th of July, 1717, and were immediately discharged. It is said in Tindal's Continuation of Rapin, “ That the Lord Duffus was “ continued under confinement, with an allowance of £.3 a week.” Vol. XIX. p. 161.

‡ On the 10th of January preceding, the House had resolved, “ That Thomas Forster, “ junior, a Member of this House, having “ been taken in open rebellion in arms against “ his Majesty, be expelled;” and immediately order a new writ for Northumberland.

§ This Bill passed the Commons: it is

12. On the 29th of April, 1746, Mr. Chancellor of the Exchequer acquainted the House, that several witnesses attended at the door, who were ready and willing to give an account of some persons who had appeared in arms on the part of the rebels during the present rebellion.—They were called in; and, after several examinations, on the 6th of May a Bill was ordered in “to attain several Lords and other persons of High Treason, unless they render themselves by a day certain, therein to be mentioned *.”

read a second time in the House of Lords on the 20th of June, 1716; and then the witnesses are examined to prove the allegations of the Bill, and it is committed.—The Bill receives the Royal Assent on the 26th of June.

* See in the State Trials, Vol. X. p. 202, the proceedings against Dr. Archibald Cameron in the Court of King’s Bench in 1753, on this Bill; when the Chief Justice pronounced the usual judgment in cases of High

Treason, “as an award of execution grounded on the Act of Attainder.” Dr. Cameron was soon after executed at Tyburn.—This case is reported in Mr. Justice Foster’s Crown Law, p. 109. It appears to have been a matter of doubt in the Court, Whether they should pronounce judgment, or only, considering the outlawry for a judgment, give a rule for execution.

VIII. *Bills of Pains and Penalties.*

1. **O**N the 20th of March, 1688, a petition is presented from Mr. Prideaux, complaining of a large sum of money being extorted from him by the late Lord Chancellor Jeffryes, under pretence of procuring him a pardon for a supposed offence.—This petition is referred to a Committee; who report, on the 1st of May, 1689, all the circumstances of the case*.—Upon which a Bill is ordered in “For charging the estates of the late “Lord Jeffryes †, late Lord Chancellor of England, with the re-
“payment of the sum of £. 15,000, and interest, which was by
“him extorted from Edmund Prideaux, Esquire ‡.”

2. On the 18th of June, 1689, after an examination at the Bar of Mr. Justice Powell, touching the opinion given by the Judges §, in the case of Godwin and Hales, concerning the King’s power of dispensing with the laws—the House come to several re-

* These circumstances are very curious.—Amongst others, it appears, that, when application was made for Mr. Prideaux’s pardon, the answer was, “That it was impossible, for
“that the King had given Mr. Prideaux to the
“Lord Chancellor.”

† Granger, in his Biographical History of England, Vol. IV. p. 272, says, That he had seen (in a book printed in 1687) a dedication to Lord Jeffryes, by the titles of “Earl
“of Flint, Viscount Wycombe, and Baron
“Wem.”—But, as in this Bill he is stiled
“Lord Jeffryes,” it is certain he was never in full possession of those honours; though, perhaps, a patent for that purpose might have been preparing for him, when that dedication was published, just before the Revolution.—

And yet, as late as the 8th day of June, 1688, in the warrant signed by him, and other Privy Counsellors, for committing the seven Bishops to the Tower, he is only called
“George Lord Jeffryes, Baron of Wem.”—
State Trials, Vol. IV. p. 300.

‡ The Bill dropt in this session, and was renewed in the three next succeeding sessions, but never passed the House of Commons.—
See the proceedings on the 9th of December and 23d of January, 1689.

§ See the substance of this examination, and of the Clerks of the Court of King’s Bench, in the Journal; and the debates, in the course of this proceeding, in Grey’s Debates, Vol. IX. p. 336, et subf.

solutions, to except Sir Edward Herbert, Sir Francis Wythens, Sir Richard Holloway, and Sir Robert Wright, upon this head, out of the Bill of Indemnity, which was then depending in the House of Commons.

3. On the 1st of July, 1689, the Commons, proceeding in the further consideration of the heads of exception in the Bill of Indemnity, resolve, upon the head of Commissioners in the several commissions for constituting the court for ecclesiastical causes, that the following persons shall be excepted out of the Bill; George Lord Jeffries—Robert Lord Sunderland—Nathaniel Crewe, Bishop of Durham—Sir Edward Herbert—Theophilus Earl of Huntingdon—Sir Robert Wright—Sir Thomas Jenner—and Thomas Cartwright, Bishop of Chester *.

4. On the 26th of October, 1689, the Commons order in a Bill for inflicting pains and penalties against such persons as have been the occasion of violating the laws and liberties in the two last reigns.—This Bill was read a second time on the 16th of January, and committed to the same Committee with the Bill of Indemnity, with an instruction to make one Bill of these two; but the proceeding on this Bill was interrupted by the prorogation.

5. On the 6th of November, 1689, a Bill is ordered to be brought in, *nem. con.* for the forfeiture of the estate and honour of

* See Grey's Debates, Vol. IX. p. 378, et subf.—This Bill did not proceed further in this session.—In the next session another Bill of Indemnity was brought in; and the Committee of the whole House, to whom the Bill was committed, agreed upon certain heads, upon which persons might justly be excepted out of the Bill.—These heads were reported on the 23d of January, 1689, and agreed to

by the House.—As these heads of exception contain many principles, which regard the free government and constitution of this country, they are inserted in the Appendix, N^o 14.—But this Bill was also stopped by the prorogation, on the 27th of January; and in the next session an Act passed, "For the King's and Queen's most gracious general, and "free pardon."

George, late Lord Jeffryes, Baron of Wem, late Lord Chancellor of England.—On the 9th of December several petitions are presented against it.—The Bill is presented on the 26th of November, but is never read a second time.

6. On the 21st of December, 1694, a Bill is presented to the Lords, to compel Edward Williams and William Williams, Esquires, to bring forth the person of Sir Paul Pindar, Baronet.—On the 19th of January, this Bill passed the Lords; and on the 31st of January Sir Paul Pindar appears, and is ordered into the care of the Yeoman Usher, that he may be brought into the Court of Chancery the next morning*.

7. On the 26th of March, 1695, a Bill is ordered in to oblige Mr. Edward Pauncefort to discover how he disposed of the money paid into his hands for the army, and for punishing him in case he shall not make the discovery.—Mr. Tracey Pauncefort, Mr. James Craggs, and Mr. Richard Harnage, are ordered to be included in the same Bill.—On the 9th and 10th of April, the two Paunceforts pray to be heard by their Counsel against the Bill.—On the 24th of April, the Counsel for all the parties are heard at the Bar, and the Bill for punishing Craggs and Harnage passed the House of Commons on the 27th; but is never returned from the Lords.

8. On the 26th of March, 1695, a Bill is ordered in, to oblige Sir Thomas Cook to give an account to whom he distributed certain sums belonging to the East India Company.—On the 30th of March, he petitions to be heard by Counsel.—On the 6th of April, his Counsel is heard at the Bar upon the third reading of the Bill, and the Bill passes the House of Commons.—On the

* This Bill did not pass the House of Commons.—See the Journal of the 13th of February and 18th of March.

17th of April * the Lords send down a Bill to indemnify Sir Thomas Cook from actions and prosecutions he might be liable to in making this discovery.—This Bill was agreed to by the House of Commons, and received the Royal Assent on the 22d of April †.

9. On the 27th of April, 1695, the Lords order the Judges to prepare a Bill ‡ to confine Sir Thomas Cook, Sir Basil Firebrace, Charles Bates, and James Craggs, Esquire, until the end of the next session of Parliament, unless discharged sooner by Parliament.—On the same day the Lord Chief Justice Treby delivers the Bill; it is read a first and second time, committed, reported, and ordered to be ingrossed, all in the same day, Saturday the 27th; and on the 29th it is passed by the Lords, and read a first time in the House of Commons.—On the 30th of April the Bill is read a second time, and petitions against it are presented from Sir Basil Firebrace and Mr. Bates, which are referred to the Committee, which sits on that day.—It is reported and passed on the 1st of May; and on the 3d of May receives the Royal Assent.

10. On the 31st of December, 1696, a Bill is ordered in, *Nemine contradicente*, for confining and securing Counter, and any others against whom there is information upon oath, of their being concerned in the horrid design to assassinate the person of his sacred Majesty §.

11. On

* The Commons, on receiving this Bill, send a message to the Lords, to put them in mind of the Bill sent from them for obliging Sir Thomas Cook to make a discovery.—Upon this message, the Lords desire a Conference, at which they state their reasons for changing the mode of proceeding against Sir Thomas Cook.

† This discovery was to be made upon oath, to a Joint Committee of Lords and Commons, who are appointed on the 22d and

23d of April, and who report this examination on the 24th.

‡ This was after a report made from the Joint Committee of both Houses, which had been appointed to take the examination of several persons upon oath; and a resolution come to by the Lords, That the discovery made by Sir Thomas Cook to that Committee was not satisfactory.

§ A Bill was also ordered in at the same time, for attainting any of the said persons who

11. On the 21st of December, 1697, a Bill was ordered for continuing in prison, Counter, Blackborne, and the other persons mentioned in the former Act *.—This Bill passed both Houses; and on the 14th of January received the Royal Assent.—On the 21st of March, 1698, another Bill was brought in for the same purpose, which received the Royal Assent on the 4th of May, 1699.—The imprisonment of these persons was further continued by an Act passed in 1701, on the accession of Queen Anne; by another Act, in 1715 †, on the accession of George I. and by another Act passed in 1727, on the accession of George II ‡.

12. On

who shall have fled from justice, and do not surrender by a certain time in order to their trial.—No examination of witnesses was had, nor, as far as appears, was any special information given to the House, prior to the ordering in of these Bills.—These Bills were consolidated, and presented as one Bill on the 2d of January.—At the Committee, on the 5th of January, witnesses are examined touching the persons named in the said Bill; and the Bill passes the House of Commons on the 7th of January.—It is read a second time in the House of Lords on the 9th, and the Attorney General then produces evidence against all the persons named in the Bill, and also against Robert Blackborne.—His name was then inserted in the Bill, by way of amendment; and to this amendment the Commons, on the 11th of January, after hearing evidence at the Bar against Robert Blackborne, agreed; and the same day the Bill received the Royal assent.

* These persons were Counter, Meldrum, Chambers, Blackborne, Bernardi, and Cassils.

† Whilst this Bill was depending, a petition from the persons named in it was offered to the House of Commons on the 12th of May; but on a question, That it be brought up, it passed in the negative, 115 to 54.—In the House of Lords, on the 3d of June, 1715,

a similar petition being read, stating, “ That the petitioners had been imprisoned for 19 years without proof or trial, and therefore praying, that they may be left to the law; or, that they may be heard by their Counsel against the Bill;” this petition was rejected without a division.

‡ These very remarkable laws, as they would now appear to us, seem to have made no impression upon the historians of these reigns; for, neither in Burnet or Kennet, can I find any mention of such Acts passing, or scarcely of the event which gave occasion to them.—In the Continuation of Rapin’s History of England, there is a very full account of the Assassination plot, in which these men were engaged, and of the manner in which it was discovered. There is also a list of the conspirators, named in the proclamation for apprehending them.—Tindal’s Continuation of Rapin, Vol. XIV. p. 285.—In the Appendix to the State Trials, Vol. X. p. 64, N° 10, there is an account published of these proceedings, written by Major John Bernardi, one of the persons, after he had been imprisoned in Newgate 33 years—he adds, “ without any allowance from government; and who could never be admitted to bail, or to take his trial, though several applications were made to the Court of King’s Bench and that

12. On the 1st of February, 1697, a bill or bills are ordered in for punishing John Knight, and Charles Duncombe, Esquires, and Bartholomew Burton, for false indorsing Exchequer Bills.—Three several Bills are presented on the 7th of February.—On the 8th, copies of the Bills are ordered to be given to the parties, with leave for them to be heard by counsel.—On the 10th of February the Attorney and Solicitor General are ordered to take care for producing the evidence against Mr. Duncombe; and on the 14th the Bill is read a second time, whilst Mr. Duncombe and the counsel are present; and then the Bill is committed*.

13. On the 25th of February, 1700, a petition is read in the House of Lords, from the Countess of Anglesea †, praying for leave to bring in a Bill of separation from her husband for cruelty.—On the 27th of February, the Lords appointed four Lords, named

“ purpose, on the demise of King William, “ Queen Anne, and George 1st.”—It appears from that account, that these persons were, by several Acts of Parliament, made from time to time, confined prisoners (for life, as it happened) from the impossibility of procuring evidence, sufficient to convict them of the crimes with which they were charged.—In a book, published in 1729, intitled, “ A short History of the Life of Major John Bernardi written by himself,” it is said, in p. 109, that Counter was set at liberty by Queen Anne—and that Meldrum and Chambers had died in prison, in the year 1724.—Bernardi died in Newgate in 1736, in the 82d year of his age, having been a prisoner there 40 years; from the year 1696.

* This Bill passed the Commons, but was rejected by the Lords on the 15th of March—Upon which occasion the Lords made the following standing order: “ That no proxies, “ for the future, shall be made use of in any “ judicial cause in this House, although the “ proceeding be by way of Bill.”—On the

14th and 16th of May, 1698, the Lords reject the other two Bills, and then address the King, “ That he will be pleased to give orders for “ the effectual prosecution of Charles Duncombe, Mr. Knight, and Mr. Burton.”—To which address his Majesty returns an answer on the 18th of May, “ That he would “ give immediate orders for their prosecution “ at law.

† This Countess of Anglesea was a natural daughter of King James II. by a daughter of Sir Charles Sedley.—Lord Anglesea died in January, 1702; and in March, 1705, Lady Anglesea married John Sheffield Duke of Buckingham—she survived him and lived till 1743, in what is now called the Queen’s House in St. James’s Park.—See a character of this Duchess of Buckingham supposed to be written by Pope, in Dr. Warburton’s edition of Pope’s Works, Vol. VIII. p. 246, with a letter from Pope to Mr. Moyer, p. 251, which “ explains the history of the writing and “ publication of this extraordinary character.”

by Lord Anglesea, to go to Lady Anglesea, and endeavour to bring about a reconciliation; and, if they could not prevail, to report to the House her ladyship's reasons for her refusal.—The Committee report on the 3d of March; and then leave is given to bring in the Bill *.

14. On the 31st of March, 1710, the Commons having come to several resolutions against Sir Humphrey Mackworth, and several other persons, as being guilty of notorious frauds and indirect practices in the Company of Mine Adventurers, order, that a "Bill be brought in to prevent their leaving the kingdom, and alienating their estates, until the end of the next session of Parliament."—On the 5th of April, Sir Humphrey Mackworth is heard by his Counsel on the third reading of the Bill; and it passes the House of Commons, and is carried up to the Lords; but, the King coming on that day to put an end to the session, it is never read in the House of Lords.

15. On the 11th of April, 1715, a petition is presented to the Lords from the Lord Digby, stating, "that his eldest son did abroad contract a frenzy, or disorder, which disposed him to the most horrid mischief and wickedness, in which he had continued four years, frequently threatening his father's life, and the lives of other persons; and that there is little likelihood he will ever be cured or recover;" and therefore praying, "That leave

* See Lord Haversham's protest on the 3d of March, and the proceedings of the Lords on the 1st and 11th of April, 1701, when, after hearing counsel on both sides, Lady Anglesea is called in and examined.—See also the Commons Journal of the 3d, 9th, and 23d of May, 1701.—The Bill received the Royal

assent on the 12th of June.—Perhaps an explanation may be thought necessary, by some of the readers of this work, for the having inserted this "Bill of Separation" under the title of "Bills of Pains and Penalties;" but they will find, from the proceedings, that Lord Anglesea considered it in this light.

“ may be given to bring in a Bill for confining the person of the
 “ said John Digby, and debarring him from his father’s honours
 “ and estate, making some other reasonable provision for him *.”
 —On the 13th of May, the Lords order a “ Bill for appointing
 “ persons to take care of the person and estate of the said John
 “ Digby; and, if he shall marry without the consent of such persons,
 “ that the issue of such marriage shall be disabled from inheriting
 “ his honour and estate †.”

16. On the 1st of July, 1717, Lord Oxford being acquitted by the Lords, upon the Commons not appearing to make good the articles of impeachment, from a dispute that had arisen between the two Houses ‡, touching the mode of proceeding; a motion is made in the House of Commons, “ That leave be given
 “ to bring in a Bill to inflict such pains and penalties upon
 “ Lord Oxford, as his traitorous practices, and other high crimes
 “ and misdemeanors, do deserve, and as shall be thought reasonable §.”

17. On

* This petition is referred to a Committee to examine the allegations; and on the 21st of April, the Lord President acquaints the House, “ That his Majesty, having been acquainted
 “ with this matter, was pleased to consent that
 “ the House might determine therein as shall
 “ be thought just.”—The Committee report, on the 13th of May, several resolutions.

† This Bill passes the Lords on the 2d of June; is agreed to by the Commons on the 27th of June; and receives the Royal assent on the 20th of July; but the latter part of the Bill, relating to disabling his issue from inheriting the honours, was left out, before it passed the Lords; and the Bill was confined only to appointing persons to take care of his person and estate.—It appears from Collins’s

Peerage, that this person, John Digby, died unmarried.

‡ This was the ostensible cause of Lord Oxford’s acquittal; but the real cause probably was what is related, upon the authority of the late James West, Esquire, in the note †, p. 287.

§ The debate upon this question is adjourned till the 3d of July, when this motion is laid aside, and the Commons address the King, “ to except the Earl of Oxford out of
 “ the Act of grace, which his Majesty had
 “ been graciously pleased to promise; to the
 “ end that the Commons may be at liberty to
 “ proceed against the said Earl in a parliamentary way;” to which address the King, on the 6th of July, returns for answer, “ That
 “ he

17. On the 4th of January, 1720, the Commons order a Bill to be brought in, "to restrain the Sub-governor, Deputy-governor, Directors, Treasurer, and other officers of the South Sea Company, from going out of the kingdom, for the space of one year, and for discovering their effects, and preventing their alienating the same *."

18. On the 16th of January, 1720, the Lords, after an enquiry, order in a Bill "to incapacitate the Sub-governor, Directors, &c. of the South Sea Company, from holding any office longer than to the next election of Directors; and to disable them from holding any office in the East India Company or the Bank of England."

19. On the 25th of February, 1720, the Commons direct provision to be made, in a Bill then depending, "That the deficiency of the money subscription, taken by the South Sea Company, be made good and answered to the Company by the Directors."

20. On the 8th of March, 1720, after a long examination, and several resolutions agreed to in the House of Commons, relating to the conduct of Mr. Aislable †, respecting the affairs of the South Sea

"he will give directions, in relation to the Earl of Oxford, as desired by the Commons."—Accordingly, in the Bill of pardon, which passed soon after, there is a clause, excepting the Earl of Oxford, Simon Lord Harcourt, Matthew Prior, and Thomas Harley, out of the provisions of the Act.

* This Bill was ordered previously to the appointment of a Committee to enquire into the affairs and management of the South Sea

Company.—On the 12th of January, the parties petitioned to be heard by their Counsel; their request is not complied with; and the petition was ordered to lie on the table.—On the 21st of January they present a similar petition to the Lords against the said Bill; which petition is rejected.

† Mr. Aislable, during the time of the transactions for which he was accused, had been Chancellor of the Exchequer.—On the 15th of

Sea Company, he is expelled, and committed to the Tower, and a Bill is ordered in “for restraining him from going out of the kingdom, and preventing the alienating his effects*.”

21. On the 10th of March, 1720, the Commons order in a Bill “for making the estates of† Sir George Caswall, Jacob “Sawbridge, and Elias Turner, subject and liable to answer “and make good to the South Sea Company a sum of “£.250,000.”

22. On the 8th of March, 1722, after reading the report from the Committee appointed to examine Christopher Layer, and others, the Commons resolve, “That it appears, that John “Plunket has been a principal agent and instrument in the conspiracy for raising a rebellion, &c.,” and immediately order in a Bill, “for inflicting certain pains and penalties on John “Plunket ‡”—On the 11th of March a similar proceeding is had, and Bills are severally ordered § “for inflicting certain pains and “penalties

July, 1721, whilst this Bill is depending in the House of Lords, the Lords, upon his petition, give leave, that Mr. Aislabe be heard by himself before the Committee; but the petition of the Sub and Deputy Governor (which is offered on the 10th of July) desiring to be heard by counsel against a Bill, for raising money upon their estates, is rejected.

* On the 18th of May, 1721, the House of Commons give an instruction to the Committee upon this Bill, to receive a clause for disabling the late Sub-governor, Directors, &c. “of the South Sea Company, and also “John Aislabe, Esquire, to hold or enjoy any “office or place of trust or profit under his “Majesty, or to sit or vote in either House of “Parliament.”—See, on the 28th of June, the Report of this Bill, and the allowances that are severally made to the Directors for the maintenance of themselves and families.—

See, on the 25th of July, 1721, the reasons given by the Commons for pursuing this mode of proceeding; “which, but from necessity, they would have left to a due course “of law.”

† Sir George Caswall, being a Member, is expelled, and committed prisoner to the Tower.

‡ See the proceedings in Parliament, upon the Bills against Plunket, Kelly, and Bishop Atterbury, in the State Trials, Vol. VI. p. 335.

§ On the 19th of March, the Bills against Plunket and Kelly are presented, and read a first time, and ordered to be read a second time; and copies of the Bills, and of the orders for the second reading, are directed to be sent to the respective parties; and the Attorney and Solicitor General are to take care that the evidence be ready in support of the Bills,

“ penalties upon George Kelly, and Francis Lord Bishop of
“ Rochester *.”

23. The Bill against Plunket being to be read a second time on the 28th of March, the Commons, on the 26th of March, 1723, order, that the Attorney General do appoint Counsel, learned in the law, to produce and manage the evidence to make out the allegations of the Bill †.

24. On the 29th of March, 1723, the Bishop of Rochester desires, by petition, the directions of the House of Lords, for his conduct in relation to the Bill depending against him in the House of Commons, as he finds, “ That, by a standing order of their Lordships, of the 20th of January, 1673, no Lord may appear by Counsel before the House of Commons, to answer any accusation there.”—The question being put, “ That the Lord Bishop of Rochester, being a Lord of Parliament, ought not to answer, or make his defence, by Counsel, or otherwise, in the House of Commons, to any Bill or accusation there depending ;” it passed in the negative ‡ ; and then leave is given to the Bishop to make

Bills.—A similar proceeding is had with respect to the Bishop of Rochester, when the Bill against him is presented, on the 22d of March. On the 23d of March, Counsel is allowed to Kelly upon his petition.

* On the 25th of March, 1723, Mr. Speaker acquaints the House, that he had received a letter from the Bishop of Rochester, “ That his Lordship had received a copy of the Bill, and hoped he should be allowed Counsel, and Solicitors, to assist him in the making his defence.”—Counsel and Solicitors are allowed.

† See the proceeding on the second reading of the Bill, on the 28th of March, in the House of Commons; and in the House of Lords on the 27th of April, where Plunket

was present at the Bar; and the proceedings in the House of Commons, on the second reading of the Bill against Kelly on the 1st and 2d of April.—Kelly, having presented a petition, desiring to be heard against the Bill relating to him, is brought from the Tower to the door of the House of Commons, where he is received by the Serjeant, and brought to the Bar; and the Serjeant stands by Kelly with the Mace in his hand, resting it on the floor all the while.—The Bill is read to the prisoner and Counsel at the Bar; and, when the proceeding is over, and the Counsel are withdrawn, it is read a second time, on the 2d of April, and committed.

‡ See the protest upon this question.

his

his defence in the House of Commons in person, or by Counsel, if he shall think fit *.

25. On the 29th of April, 1723, the Bill against Plunket is read a third time in the House of Lords, and passed †.

26. On the 6th of May, 1723, the Bill for inflicting certain pains and penalties against the Bishop of Rochester, is read a second time in the House of Lords.—The Bishop is brought to the Bar by the Black Rod, from time to time, whilst the Bill is depending ‡.

27. On the 20th of March, 1728, a Bill is ordered in the House of Commons for disabling Thomas Bambridge from holding or executing the office of Warden of the Fleet, or from having any authority relating thereto §.—On the 12th of April, 1729, Bam-

* The Bishop, however, by a letter to the Speaker, on the 4th of April, declines availing himself of this permission; and the Bill is read a second time on that day, the evidence produced, and the Bill ordered to be committed.

† See the protest upon this question.—Before the Bill passed, a question was put to the Judges, “Whether, if Plunket, after the passing of the Bill, shall be indicted for the treasons with which he stands charged in this Bill, he can plead this Act in bar of such indictment?” to which the Judges give their unanimous opinion, “That, if the Bill should pass into a law, he may plead the same in bar of such indictment.”

‡ See the further proceedings in the House of Lords, and the evidence produced in support of and against this Bill, on the 6th, 7th, 8th, 9th, 10th, 11th, and 13th of May.—When the evidence is closed, the Bill is read a second time—not committed—but ordered to be read the third time on the 15th of May.—

See the protest on the question, That the Bill do pass.—On the 11th of May, Bishop Atterbury made a very excellent speech at the Bar against the Bill. An authentic copy of it is published in p. 105 of the 2d volume of a work, intitled, “The Epistolary Correspondence, Speeches, &c. of Bishop Atterbury,” printed in 1783; in which speech he positively denies the facts which are charged against him as the foundation of the Bill.—But see the note to the 1st vol. of that work, p. 147, et subf.—He was banished by this Bill, and died at Paris in February, 1731.

§ This Bill was grounded upon a report made from a Committee appointed to enquire into the state of the gaols; which report is entered in the Journal.—See in the State Trials, Vol. IX. p. 145, the trial of Bambridge at the Old Bailey, in May, 1729, for the murder of one of his prisoners, by hard and cruel treatment; and in p. 152, the proceedings on an appeal for the same crime.

bridge petitions against the Bill, and desires to be heard.—This petition is referred * to the Committee on the Bill, with leave for him to be heard by himself or his Counsel there.

28. Whilst the former Bill is depending in the House of Lords, the Lords, on the 5th of May, 1729, order in another Bill, for empowering his Majesty to grant the office of Warden of the Fleet to another person, and to incapacitate Bambridge from enjoying that or any other office whatsoever.†

29. When the Bill for disabling Bambridge is carried up to the House of Lords, the Lords, on the 25th of April, 1729, appoint a Committee to search precedents of proceedings on Bills of the like nature.—They report on the 26th; and a Conference is desired with the House of Commons, for the purpose of knowing the grounds on which they proceeded to pass the Bill ‡.

30. On the 25th of February, 1731, after reading the report from the Committee appointed to enquire into the affairs of the Charitable Corporation, the House order in a Bill to compel the appearance of George Robinson; and a Bill to compel John Thompson to surrender himself by a day certain §.

31. On

* This proceeding was informal, as the petition was against the whole Bill, and not against particular parts or clauses in it.—The hearing should have, therefore, been at the Bar, on the second reading, and not at the Committee.—See, the 16th of April, 1729, the Speaker's Warrants for bringing up persons to be witnesses.—The Committee report on the 18th.

† This Bill passes the Lords, and is sent down to the Commons on the 7th of May; on the 9th of May, 1729, Bambridge presents a petition to the House of Commons, complaining of this hardship, of two Bills, for the same

offence, subsisting against him at the same time.—This petition is also referred to the Committee on the Bill from the Lords, with leave for Bambridge to be heard by Counsel.

‡ On the 30th of April, 1729, the Lords direct Counsel to be heard for the Bill, and the Attorney General to have notice of this order.—See the proceeding on the second reading, on the 2d and 3d of May.

§ On the 7th of March, these Bills are both referred to the same Committee, with an instruction, "That the said Committee do alter and make both the said Bills into one Bill."—This Bill passes; and on the 12th of May, neither

31. On the 8th of May, 1732, the House order in a Bill * for restraining Sir Robert Sutton, Sir Archibald Grant, and several other persons, from going out of the kingdom for a limited time, and for preventing the alienating their estates or effects.

32. On the 1st of April, 1737, after considering a report from a Committee of Examinations, in relation to the outrage and riot in Scotland, in which Captain Porteous was murdered, the Lords order, That a Bill be brought in, “ to disable Alexander Wilson; Pro-
“ vost of Edinburgh, from taking, holding, or enjoying any office
“ of magistracy in the said city, or elsewhere in Great Britain,
“ and for imprisoning him for a certain time;” and that the Judges do prepare the said Bill †.

33. On the 3d of June, 1737, the Lords send down a Bill for the more effectual bringing to justice any persons concerned in the murder of Captain Porteous, and punishing such as shall knowingly conceal any of the offenders; which passes the House of Commons on the 16th of June.

34. On the 25th of April, 1746, a Bill is ordered in the House of Commons, for calling any suspected person or persons, whose estates or principal residence are in Scotland, to appear at Edinburgh, or where it shall be judged expedient, to find bail for their

neither Robinson or Thompson having surrendered, the Chancellor of the Exchequer acquaints the House, from his Majesty, “ That
“ they being now, by the said Act, adjudged
“ guilty of felony, his Majesty gives leave
“ that all forfeitures, accruing thereby, be
“ disposed of as the Parliament shall think
“ proper.”

* This Bill also arose out of the report from the Committee on the affairs of the Charitable Corporation; in the management of which

these gentlemen, as Directors, had appeared to be guilty of notorious breaches of trust.

† See the proceedings upon this Bill in the Lords Journal on the 1st, 4th, and 5th of April, and the 3d of May; and in the Commons Journals of the 16th, 17th, and 18th of May, and the 1st of June, &c. 1737.—On the 7th of April, Wilson, who had been ordered by the Lords into the custody of the Black Rod, was admitted to bail.—See the form of the bail-bond in the Lords Journal, on the 19th of April.

good behaviour. This Bill passes both Houses, and receives the Royal Assent on the 4th of June.

35. On the 6th of March, 1758, Lady Ferrers presents a petition to the House of Lords, complaining of cruel treatment from her husband Earl Ferrers, and praying for a Bill of separation *.—On the 10th of March, this petition is referred to the examination of a Committee, who make a report, on the 20th, of all the circumstances; when leave is given to bring in a Bill of separation †.

* It has been observed on the insertion of this case, as well as of the former of Lady Anglesea, N^o 13, "That they are neither of them properly to be called "Bills of Pains and Penalties." The reason for their being inserted here is, That they are *Privileges*, or Laws made in the instance of particular persons; which, though they may have, for their first and principal object, the protection of the Lady, and her security from insult and cruel treatment, do, by their operation, inflict on

the husband the penalty, of being compelled to live separated from his wife.

† This Bill passed into a law.—The protection of each House was granted to the Countess Ferrers, during the pendency of the Bill. See Lord Ferrers's case, as reported in Judge Foster's Reports, p. 138; and an account of his behaviour at the place of his execution for murder, published, by the authority of the Sheriffs, in the Appendix to the State-Trials, Vol. X. p. 213,

A P P E N D I X

TO THE

F O U R T H V O L U M E.

A P P E N D I X, N^o I. (p. III.)

Lunæ 15^o die Julii 1717.

*Reasons of Lords and Commons, on Question of passing a Bill
Nem. Con.*

A MESSAGE from the Lords, by Mr. Justice Dormer,
and Mr. Justice Eyre:

Mr. Speaker,

The Lords have accepted and passed a Bill, intituled, "An
" Act for the King's most gracious, general, and free par-
" don," Nemine contradicente; and have sent it down to this
House.

And then the Messengers withdrew.

The Bill was once read.

And the Bill being signed by his Majesty, all the Members sat
uncovered while it was read.

Resolved, Nemine contradicente, That the Bill do pass.

Ordered, That Mr. Attorney General do carry the Bill to the Lords, and acquaint them, That this House hath agreed to the same.

Ordered, That a Committee be appointed to search Precedents, and to prepare reasons to be offered to the Lords at a Conference, upon the message from their Lordships to this House, with the Bill, intituled, "An Act for the King's most gracious, general, and free pardon:"

And it is referred to Mr. Chancellor of the Duchy, Mr. Comptroller, &c. &c. &c. or any three of them: and they are to withdraw immediately into the Speaker's Chamber; and to make their report with all convenient speed.

Mr. Chancellor of the Duchy reported from the said Committee, That they had searched Precedents, and prepared reasons to be offered to the Lords at the said Conference, which he read in his place, and afterwards delivered in at the Clerk's Table: where they were read; and agreed unto by the House; and are as follow; viz

The Commons, having this day received a message from your Lordships, in these words, "That the Lords have accepted and passed a Bill, intituled, An Act for the King's most gracious, general, and free pardon, Nemine contradicente; and have sent it down to this House;" have desired this Conference, to acquaint your Lordships, That this message is not according to the usual way of transmitting Bills between the two Houses; for that neither House does acquaint the other by what number any Bill before them doth pass; and the introducing any alteration in the usual method of proceedings may be of dangerous consequence.

Ordered, That a Conference be desired with the Lords upon the subject-matter of their Lordships message to this House, with the Bill, intituled, "An Act for the King's most gracious, general, and free pardon."

Ordered,

Ordered, That Mr. Chancellor of the Duchy do go to the Lords, and desire the said Conference.

Mr. Chancellor of the Duchy reported to the House, That he had, according to their order, been at the Lords, and desired the said Conference; and that the Lords do agree to a Conference, and appoint the same immediately, in the Painted Chamber.

Ordered, That the Committee, who were appointed to draw up reasons to be offered at the said Conference, do manage the Conference.

And the Managers went to the Conference.

And being returned;

Mr. Chancellor of the Duchy reported, That the Managers had been at the Conference, and delivered the reasons directed by the House to the Lords.

A message from the Lords, by Sir Thomas Grey, and Mr. Bennet:

Mr. Speaker,

We are commanded by the Lords to acquaint this House, That the Lords desire a present Conference with this House, in the Painted Chamber, upon the subject-matter of the last Conference.

And then the Messengers withdrew.

Resolved, That the House doth agree to meet the Lords at a present Conference.

And the Messengers were called in again, and Mr. Speaker acquainted them therewith.

Ordered, That the Managers who managed the last Conference do manage this Conference.

And the Managers went to the Conference.

And being returned;

Mr. Chancellor of the Duchy reported, That the Managers appointed

pointed had met the Lords at the Conference ; and that the same was managed, on the part of the Lords, by the Lord Privy Seal ; who acquainted the Managers, That their Lordships, in order to preserve a good correspondence with the House of Commons, which they shall always endeavour to do as far as lies in their power, have desired this Conference upon the subject-matter of the last Conference ; and have commanded us to acquaint you, That the Lords, upon perusal of their Journal of the 20th of May, 1690, do find, that the like message was then sent down from the Lords to the Commons, upon the same occasion, with the words “ Nemine contradicente,” to which the Commons now seem to object ; and their Lordships do not find, that any notice was then taken thereof by the Commons, nor at any other time ; although the said message was sent to the Commons on the said 20th day of May, and the Bill was not returned till the 23d of the same month, and the House of Lords continued sitting on the intermediate days : and the Lords are of opinion, that, the passing of Bills of this nature differing so materially in many circumstances from the forms of passing other Bills, no argument can be drawn from those forms to support the objection made by the Commons to the message sent by the Lords, with the Bill, intituled, “ An Act for the King’s most gracious, general, and free pardon.”

Ordered, That the said Report be now taken into consideration.

The said Report was read.

Ordered, That the Committee who managed the last Conference do search precedents, and prepare reasons to be offered to the Lords at a Conference, upon the subject-matter of the last Conference : and they are to withdraw immediately into the Speaker’s Chamber ; and make their report with all convenient speed.

Mr. Chancellor of the Duchy reported from the said Committee, That they had searched precedents, and prepared reasons

to be offered at the said Conference; which they had directed him to report to the House; and he read the same in his place; and afterwards delivered them in at the Clerk's table: Where they were read; and agreed unto by the House; and are as follow; viz.

The Commons have taken into consideration the reasons communicated to them by your Lordships at the last Conference; and, being desirous, on all occasions, to preserve a good correspondence with your Lordships, have commanded us to acquaint your Lordships, That they find, on perusal of their Journal of the 20th of May 1690, That no such message was delivered to the Commons on that day, as is mentioned in your Lordships reasons: But they find, that the like message with that communicated by your Lordships this day was delivered to the Commons on the 22d of May, 1690: Whereupon, the Commons, taking exception to the words "Nemine contradicente" contained in the said message, appointed a Committee to search precedents, and to prepare reasons to be offered at a Conference with your Lordships; and the same being prepared, they, on the 23d of May, 1690, did resolve, That a Conference should be desired with your Lordships on the said message; and did immediately order one of their Members to go to your Lordships, and desire the said Conference.

That the Commons conceive; that the different form of passing Bills of this nature doth very much strengthen the objection now made by the Commons; for which reasons the Commons do insist on the reasons delivered to your Lordships at the last Conference.

A message is then ordered to be sent to the Lords to desire another Conference on this subject; which message is not delivered, as the King comes and prorogues the Parliament.

A P P E N D I X, N° 2. (p. 39.)

*Martis, 13^e die Augusti 1689.**Report concerning the Rules of the House in Conferences.*

MR. Solicitor General reports from the Committee, to whom it was referred, to prepare reasons for a Conference with the Lords, for the settling the method of proceedings between the two Houses, upon Conferences, and Free Conferences; That the Committee had prepared the same accordingly; the which he read in his place; and afterwards delivered the same in at the Clerk's table: Where the same were read; and are as followeth:

The Commons have desired this Conference, upon the subject-matter of the message, sent by your Lordships the one-and-thirtieth of July last, to acquaint them, That your Lordships had adhered to your amendments, proposed to be made to the Bill, for reversing two judgments given in the Court of King's Bench against Titus Oates, Clerk.

The Commons have commanded us to represent briefly to your Lordships, how the case stands between the two Houses, in relation to this Bill.

Writs of Error were brought before your Lordships, in order to reverse the judgments given against Oates upon two indictments, for perjury: By which judgments, "He was to be divested of his canonical habits; and to continue so divested during his life: He was yearly, during his life, to be set in the pillory several times, at divers public places: He was to be imprisoned during life: was to be whipped from Aldgate to Newgate, one day; and from thence to Tyburn, another day: And was fined one thousand marks."

These

These judgments your Lordships thought fit to affirm.

The precedents being of such dangerous consequence to every English subject, the Commons thought themselves under a necessity of sending up a Bill to your Lordships, in order ~~to~~ have these judgments reversed by Act of Parliament: In which Bill, the judgments are called erroneous, illegal, cruel, and of evil example to future ages.

Your Lordships, by a message, the thirteenth day of July, did acquaint the Commons, That you had agreed to ~~the Bill~~, with amendments.

By the amendments, the words "illegal, cruel, and of ill example to future ages," are omitted: And a clause is added, That such excessive punishments shall not be inflicted for the future.

The words which concern the annulling of the judgments given by the House of Peers upon the Writs of Error, are omitted: And a clause is added, That till the Matters for which Oates was convicted be heard and determined in Parliament, he should not be received for a witness, or to give evidence, in any court or cause.

The Commons, at a Conference, the twenty-second of July, delivered their reasons, why they could not agree to these amendments.

Your Lordships delivered your reasons for insisting upon the amendments, at the Conference, the twenty-sixth of July.

The reasons given by your Lordships not being satisfactory to the Commons, a Free Conference was desired, and had the twenty-ninth of July: At which it was owned by your Lordships, that the whole House of Peers was satisfied, that the judgments given in the King's Bench were erroneous and extravagant; and the punishment so exorbitant, as ought not to be inflicted on an English subject; and also, that you would not enter into a debate with them, whether an erroneous judgment must

not necessarily be illegal: But yet your Lordships did declare, That upon the Writs of Error, you had chosen to affirm the judgments, rather than Oates should be restored to his testimony; which must have been the consequence of the reversal.

After your Lordships had owned so much at the Conference, the Commons were extremely surprized to receive a message, That you had adhered to your amendments;

1. First, Because by this vote of adhering generally, your Lordships do depart from what was yielded to upon the Free Conference; at which (as the Commons did apprehend) some of the amendments were waved by your Lordships.

Secondly, The Commons find cause to be dissatisfied with the message;

Because your Lordships have proceeded to adhere upon the first Free Conference: Which they look upon to be irregular; at least to be contrary to the ordinary course of proceedings between the two Houses (especially if such adhering should be looked upon as conclusive); it being well known to your Lordships, That it is usual to have two Free Conferences, or more, before either House proceeds to adhere. And, as it is the course of Parliaments, so it is suitable to the nature of the things, that there should be no adhering till after two Free Conferences at the least; because, before that time, each House is not fully possessed of the reasons, upon which the other does proceed; nor have the Houses had the full opportunity of making replies to one another's arguments: And, to adhere sooner, is to exclude all possibility of offering expedients.

This method, of adhering so suddenly and unexpectedly, draws very ill consequences after it, as appears by what has happened this session; the additional Poll Bill having been lost, to the great prejudice of the Crown, by your Lordships adhering upon the First Free Conference. The Bill of Rights (in which your

Lordships,

Lordships, as well as the Commons, are highly concerned) by this quick way of adhering, now put in use by your Lordships, is in danger to be lost: And no inconveniencies can be greater than what must follow the loss of this Bill, if your Lordships should take yourselves to be concluded, by adhering upon the first Free Conference.

For the Commons think it is not to be denied, That in proceedings in your judicial capacity upon Writs of Error, your Lordships are as much bound to give judgment upon the record, according to the strict rules of law, as any inferior Court whatsoever; and ought not to enter into the consideration of persons, or collateral respects.

That, for your Lordships to assume a discretionary power to affirm a judgment, though at the same time you agree it to be erroneous, is to assume a power to make law, instead of judging according to the rules of law.

That, when the Commons send up a Bill to your Lordships, in order to prevent the mischiefs of such destructive precedents, for your Lordships to refuse to reverse these Judgments (though confessed to to be erroneous) unless upon such terms as you are pleased to impose, and to which the Commons cannot in reason agree, is to leave the kingdom without redress against acknowledged wrongs.

It is recorded, to the honour of our noble ancestors, That they declared they would not change the laws: And the Commons hope you will pursue their steps; and not, by affirming erroneous judgments, go about to make that law, which was not so before; and, by insisting on collateral terms before you will reverse those judgments in the legislative way, take to yourselves, in effect, the whole power of the legislature; which is, not only to change the law, but to subvert the constitution of the Government, if your Lordships should insist upon such a way of proceeding, and the Commons should acquiesce in it.

The Commons do therefore hope your Lordships will not insist upon this unusual method of adhering ; which manifestly tends to the interruption of a good correspondence between the two Houses (the Lords and Commons having frequently agreed upon the second and third Free Conference, when they could not upon the first), especially at so unseasonable a time, when an entire agreement between the two Houses is of such absolute necessity for the establishment of the government, and for the peace and safety of the kingdom.

On receiving a message from the Commons on the 13th of August, to desire a Conference on this subject, the Lords appoint a Committee to see, "What precedents may be found of granting " Conferences, after adhering." It does not appear, that this Committee make any report.

APPENDIX, N^o 3. (p. 40, and 278.)

Mercurii, 13^o die Januarii, 1691.

Mr. Montagu's Report of what passed at Conferences touching an Amendment made by the Lords to a Bill for regulating Trials in Cases of Treason ; and also a Report made to the House of Lords, on the 18th of January, 1691, from a Committee to inspect Commissions for Lords High Stewards, &c.

MR. Montagu, according to the order of the day, reported the two Free Conferences with the Lords upon the Bill for regulating of trials, in cases of Treason ; as followeth :

That the Members of this House, who were commanded to manage the Free Conference with the Lords, on Tuesday, the 5th of this instant January, did attend their Lordships :

And that the Conference was begun by the Managers of this House : Who did acquaint the Lords, That the Commons had desired this Free Conference, in order to a good correspondence with their Lordships.

That the inclinations which the Commons have to continue that good correspondence, which has yet been happily maintained between the two Houses, was sufficiently expressed by their proceedings in the whole progress of the Bill.

That this Bill was begun by the Commons, for the equal advantage of such Lords or Commons, who had the misfortune to be accused of treason or misprision of treason.

That, when it was first returned from their Lordships, it came down with very many amendments : And the Commons were so willing to comply with the desires of their Lordships, and to give the Bill a speedy passage, that they agreed to all those amendments,

ments, except the two last ; though some of them were of a very nice nature ; and related to things of which the Commons have ever been most tender.

That, at the first Conference, the Commons gave their Lordships the reasons that induced them to make those two amendments : Which did so far satisfy their Lordships, that they did agree to their first amendment proposed by this House, though they did insist upon this other, for which they delivered their reasons at the second Conference.

That the reasons had been solemnly and deliberately considered by the Commons : But they had not found them sufficient to convince them : And they did still disagree with the Lords in the clause marked A * ; and did insist upon that disagreement.

And that your Managers told them, it was very unfortunate, that no Bill, for the relief of the subject in these cases, had been tendered, for many years last past, but either this clause, or something of the like nature, had unhappily clogged it, and been the occasion of losing it : And that, as this was never thought reasonable to be admitted formerly, upon any account, so neither can the Commons now consent to so great an alteration of our Constitution as this would introduce.

* This clause (A.) to which the Commons now disagreed, was afterwards consented to by them on the 17th of January, 1695, and makes part of the Bill, which passed in that year, “ for regulating trials in cases of treason.” 7th W. III. ch. 3.—It directs, “ That upon the trial of any Peer or Peers for High Treason or Misprision of Treason, all the Peers, who have a right to sit and vote in Parliament, shall be duly summoned.” On the 10th of January, 1689, the Earl of Bridgewater reported from the Committee of Privileges, their opinion, “ That no Peer ought to be tried in time of Parliament, but by the House of Peers : and that, at the trial of any Peer out of Parliament, it shall be lawful for all the

“ Peers of England to be at such trial.” This report is considered on the 14th of January, when the Lords resolve “ That it is the antient right of the Peers of England, to be tried only in full Parliament, for any capital offences.” Against this resolution there is a protest.—And on the 17th of January, it is declared, “ That the order made on the 14th shall not be understood or construed to extend to any appeal, of murder or other felony, to be brought against any Peer.” It has happened, that no Peer has been tried, since that time, for any capital offence, except in full Parliament.—See before, p. 277, N° 2, and the note.

That such an alteration is far beyond the intent and design, which the Commons had in preparing this Bill. They were desirous that all men should have a fair and equal way of making their innocence manifest: But they did not design to subvert the essence and constitution of the Courts: They did not intend to disable the Crown in one of its most necessary prerogatives; or to place a judicature in other hands than those to whom the laws of England, and the custom of the realm, have committed it.

But that the clause, now in dispute, strikes at no less than this; and, in consequence, at the alteration of the Government of England.

That the Government of England is monarchical: And the monarch has the power of constituting courts and officers for administration of justice. Though they are to proceed according to known rules and limitations of law, the judges are constituted by his commission; the sheriffs are of his nomination and appointment, who are to return the panel of jurors who are to pass on the lives of the Commoners: And, in like manner, it is the prerogative of the Crown to constitute a Lord High Steward; who, by his Serjeant at Arms, does summon a competent number of Peers to be tryers of their Lordships.

But that this clause would erect a judicature independent on the Crown.

That experience of past times has not contradicted that opinion of the honour and integrity of the Lords, which the Commons have received.

That their design in passing this Bill was to prevent those abuses in trials for treason, in inferior Courts, for the future, by means of which, during the violence of late reigns, they had observed divers had lost their lives.

That the things to which the Bill extends are of such a nature, that, except only in one instance, that is, the time of the delivery of the copy of the panel (for it was agreed, even in Lord Russell's case,

case, that the subject had the right to have the copy of the panel), the Lords have an equal benefit with the Commons.

That the Commons do not observe, that the clause, sent down by the Lords, does relate to the like grounds of complaint. No instance can be given of any Peer who suffered during the late reigns, from whence a just cause of objection might arise to the present method of trying Peers.

That the only two persons prosecuted came off, though pursued with great violence; the one *, because the Grand Jury could not be prevailed on to find the Bill: The other † was acquitted upon his trial, by the justice of his Peers.

That, by all the circumstances of that trial of the Lord Delamere, it is manifest, that, if there were any unfairness in that method of trial, it then would have appeared. The violence of those times was such, that the Commons were not protected by that innocency which has since been declared in Parliament: Yet then the Lord Delamere was acquitted, by the honour and the justice of his Peers: And it may seem strange to future ages, that the Commons should be contented, that the method of trials should be continued, which was not sufficient to protect their

* This was the first Earl of Shaftsbury.— See the proceedings on this occasion, where the Grand Jury returned the Bill *ignoramus*, on the 24th of November, 1681; in the State Trials, Vol. III. N° 108. p. 414—with Sir John Hawles's remarks on this Grand Jury, and their conduct, in the State Trials, Vol. IV. p. 183.—There is a character of this Earl of Shaftsbury, which though drawn by one, who was his enemy, appears to be justified from the history of those times. "Shaftsbury in all the revolutions, from 1641, was famous for turning from side to side; still foremost in the several turns of government, though ever so contrary to one another. When Chancellor, he was a

bold asserter of prerogative. He had the chief hand in declaring for liberty of conscience. He promoted the second Dutch war. He advised shutting up the Exchequer. He justified all proceedings to Parliament. But when the declaration for liberty of conscience was recalled, seeing how the stream ran, he dextrously tacked about, and closed in entirely with the republican party."

Life of James II. written by himself.
M^r Pherfon's St. Papers, Vol. I. p. 70.

† Lord Delamere; tried in the Court of the Lord High Steward, by Lord Jeffries, in 1685.—See the proceedings on this trial in the 4th Vol. State Trials, N° 137, p. 210.

innocency; and their Lordships alter that which has proved a bulwark to their lives.

That the Commons also think the clause to be of a different nature from the Bill; because the Bill does not make any alteration in the constituting of the court, or in the nature of the trial; but the Commons apprehend, that this is done by the clause.

That the court is no longer constituted by the precept of the Lord High Steward, who receives his commission from the Crown: but the whole order of Peers have a right to make up the court: and all the friends, the relations, and the accomplices of the person, are to be his tryers.

But that there is another great alteration in the constitution of the court, as the clause is penned: this method prescribed by the clause, is for the trial of every Peer: and every Peer, who has a right to sit and vote in Parliament, is to be summoned; and may appear and vote.

Now, it is agreed by the most learned authors, that the Lords Spiritual are Peers:

That this is certain; whoever would go about to defend the contrary opinion, would find it difficult to answer the several records of Parliament, and other authorities, where this point is asserted:

The well-known claim in Parliament of Archbishop Stafford, in the reign of Edward the Third:

The famous protestation 11 Rich. II. when the Bishops thought fit to absent themselves from Parliament, because of matters of blood to be agitated there; wherein their right of Peerage is directly asserted: and this protestation being inrolled at the desire of the King, and with the consent of the Lords and Commons, seems to be of the nature of an Act of Parliament.

And if the law books may come in for authorities in such a

point; there are cases where the pleas of Bishops, as Peers, have been judicially allowed.

So that this clause does directly let in the Lords Spiritual to try and be tried, as other Peers, who are noble by descent. Not that the Commons are dissatisfied with this, if this were the only matter: the Lords Spiritual, in all probability, by their learning and integrity, would greatly assist at the trial of Peers; and the Commons are well enough disposed to let in those noble Prelates to any privileges, in point of trials, which shall be proposed by the House of Peers: but that this is urged to make good the position laid down before, That, by this clause, the constitution of the Court is quite altered; it having been taken for law, that the Lords Spiritual are not to be tried as other Peers, or to be present, or vote at the trial of any other Peers, at least out of Parliament: for, as to their right in Parliament, how far they are restrained by their Canons "*agitare judicium*," how far those Canons have been received in England, and what the usage of Parliaments has been, is not the present business.

That, had this Bill come first down from the Lords, and the Commons had added a clause, That no Commoner should be tried for treason but before all the twelve Judges, and by a Jury of twenty-four persons; and to have taken away all challenges for consanguinity (which, if it be considered, is somewhat of the nature of the Lords' clause, though it does not go so far); that if the Lords had thought fit to have used the same reason for disagreeing to such a clause, as the Commons had done in the present case, "That it was different from the design of the Bill;" that the same reasons which the Commons received from the Lords at the last Conference, if they had been delivered by the Commons, would not have been convincing to their Lordships.

That the Commons observed, That the Lords, in the clause, or in their reasons, have not stated any cause of objection to the present method of their trials: and therefore the Commons wonder, that.

that the Lords (as they expressed themselves in their reasons) should conceive, that they were distinguished, so as to be more exposed in their trials than the meanest subject; since the Commons do not find but that they enjoy this great and high privilege (upon which so great a value has been justly put) as fully as ever any of their noble ancestors did.

That it is by this privilege that the body of the Peers has been preserved so long: if any Lord, at any time, should be disposed to expose himself in defence of the common liberties of the people, the Commons are a security to him against being oppressed by false accusations: twelve of them must agree to find a Bill, before he can be indicted: and that Bill cannot be found, but upon the oaths of two credible witnesses.

That the Commons look upon the method of trials, which the Lords would alter, to have been as ancient as the constitution of the Government:

That it appears in the year books, to have been practised in the first year of Henry the Fourth; and to have been well known at that time.

That indeed, it cannot be supposed to have been an innovation then: the Lords, who had just before deposed King Richard II. were too great to suffer such an innovation; and Henry the IVth's title was not sufficiently established to attempt it.

That the reason, why no elder instances of proceedings before the Lord High Steward are to be found, is this;—that this very Henry the IVth, when Duke of Lancaster, was the last High Steward who ever had any fixed interest in the office; so that, the office being so long since ceased, all the records are lost; and the very nature and power of the office, except in this instance of trying of Peers, and determining claims at Coronations, is lost: But, since that time, the High Steward being only *pro unica vice*, the proceedings are commonly transmitted into other courts; and so come to be found.

That the Commons observed, That, if there be any objection

to that method of trying of Peers, it must be founded on a supposition of partiality and unfairness in constituting of a High Steward, or in the High Steward himself, and the Peers summoned by him: and the Commons are unwilling to enter into such kind of supposals.

That, as to the partial constituting of a High Steward, if that may be supposed, it is an objection to the constitution, which intrusts the Crown with the administration of justice: that supposal may as well extend to the constituting the Judges, and the Sheriffs, and every other part of the administration: and that if, upon such a supposal or distrust, the remedy must be, to take that part of the administration out of the Crown (as is done in this case), the same reason must carry the thing so far, that the nature of the government will be altered.

As to the partiality of the Lord High Steward, and the Peers, the Commons are unwilling to suppose, that it is possible that twelve Peers should be ever found (for that number must agree, or the person accused is safe) who can so far forget their honour, and the noble order they are of, as, for revenge or interest, to sacrifice an innocent person.

But that, if the Lords will suppose that such a number of Peers may be capable of being engaged in so ill and so dishonourable things, then the Commons think themselves excused, if they suppose, that other passions and motives may also prevail upon the Peers; such as pity in friends, partiality in relations, and the consideration of their own safety in the case of accomplices: and that most men, especially Englishmen, enter unwilling into matters of blood.

That the most indifferent Peers will be most likely to absent themselves, either from a consideration of dissatisfying the Crown on the one hand, or drawing on themselves the mischiefs of a breach with the family of the person accused on the other (for it is to be observed, that a restitution of the family follows generally

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in a short time); or, at least, the love of security and care of not engaging too far: for these trials (which, for the most part, happen in unquiet and troublesome times) will keep indifferent men away.

But that the care for a friend will not fail to bring friends to the trial: the concern to preserve their family from that stain, will bring relations: and, if there be any accomplices, they must be ready, for their own sakes, to acquit the accused: and that probably their number must be considerable in these cases; for it is not to be imagined, that a Lord can enter into those base and detestable actions, which may be performed by single persons, such as poisoning or assassinating the Prince.

That the treasons, in which it can be imagined that Lords may be engaged, may be such as arise from factions in the state; in which many must be engaged: and if some accident discover sufficient matter for a charge against one of the party, the rest, who are concealed still, will have as good right to try their confederate, as any indifferent Lord; and no doubt but it is their interest to acquit him: and how far, at some times, this alone may go towards turning the scale of justice, may deserve to be considered; especially in times (which may happen hereafter, because they have happened heretofore) when there may be several titles set up to the Crown, and great parties formed.

That this is a law which is to have a perpetual continuance: and that the same loyalty, wisdom, and zeal, which appears now in their Lordships, should be derived down to all their posterity, is a thing rather to be wished than depended upon.

That if, therefore, the clause has a tendency towards letting in an impunity for treason, the Commons look upon themselves as justified in disagreeing to it:

For that they think it obvious to every one, of what consequence it will be to the Constitution, if such a body as the Peers, who.

who have already such high privileges of all sorts, should have impunity for treason added; and what that must naturally end in.

That the Commons agreed with the Lords, That a good correspondence between the two Houses is of necessity, for the safety, honour, and greatness of the nation: and can never think, that it is to be interrupted by their refusing any thing which may endanger the Constitution; assuring them, the Commons will never fail in improving the true interest of the Lords: But they persuade themselves, that the Lords will be of opinion, That to introduce any thing which tends to an impunity for treason, is neither the true interests of the Crown, the Lords, or the Commons.

THAT the Managers for the Lords, who spoke at this Conference, were the Duke of Bolton, the Marquis of Hallifax, the Earls of Pembroke, Mulgrave, Stamford, Nottingham, Rochester, and Monmouth.

That the substance of what was said by the Managers for the Lords was, That the Lords were sorry to be of any opinion different from the Commons, especially in a clause of so great importance, which did concern not only their well-being, but their very being: That they had not differed from us in any thing propounded for our security, and hoped we would have the same consideration for theirs: That nothing was so proper for a Parliament as to provide defences for innocence in ill times. Necessity, in good prudence, puts us upon it. And though these were good times in respect of the present Government, they may say, they are unquiet and unsafe: And what but a good Prince will ever pass such laws as these are? This is the most proper time to provide for the subject. For a good King would be willing, not only to protect them while he lives, but to provide for their security after his death.

That

That this concerned not only themselves; and therefore they would speak the more freely: It is too narrow a consideration for a Parliament to seek only our present ends: Our ancestors had further thoughts: And they did not doubt but we should have so too. This clause is not for the Lords' sake alone: There can no good be done, in times of trouble, and invasion of rights, but by agreement of both Houses: There must be a concurrence of the greatest part of the Lords, and the greatest part of the Commons, to maintain the Government of England: There may come a Prince, when we are dead and gone, that may endeavour to invade the liberties of the people: And then the Commons would be glad to have the concurrence of the Lords: And desired we would consider in such a case, Whether it would not be a great discouragement for the Lords to act; unless they might be as secure, at least, as the Commons: And there may be such Princes. Is it fitting, that part of the Government, which is so necessary in their concurrence, should be under such terms for their lives, that they dare not oppose them with vigour; nor act, because they lie under shackles?

That the Lords would do what was just, though this clause should not pass: But they would be loth, that those Lords, that are eminent for their public service, should be eminent for their sufferings for it.

That, in the case of impeachments, which are the groans of the people, and for the highest crimes, and carry with them a greater supposition of guilt than any other accusation, there all the Lords must judge: But when there comes a private prosecution, which may proceed from the influence of particular men; then a Lord lies under the hardship of being tried by a few Peers, chosen to try him; when all the people may sigh and wish for him: But such a clause would do him more good.

That, suppose an ill Minister should apprehend an impeachment in Parliament, what manner of way could that man hope
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better to come off by, than by being tried before a Parliament sits; where his judges may be chosen so partially, as he shall come off; and it shall be said, no man can legally undergo two trials for the same offence.

That this way of trial was not ancients than Henry the VIIIth. That it was brought in then to take off those that he did not like: That, in his time, the Duke of Buckingham was taken off, in this manner, by Cardinal Wolsey: That Anna Bullein was condemned by her own Father: And afterwards, a party was chosen to condemn the Duke of Somerset, and the Duke of Northumberland. That the case of the Earl of H. 1 H. IV. is no good case, nor truly reported; for the Parliament Rolls, 2 H. IV. mention his being beheaded by the rabble in Essex.

That this does not alter the Constitution any more than as, in some sense, every new law may be said to alter the Constitution: And the Commons say it is altered; because, formerly, it was by a set number; and now all must appear: That does not seem to alter the Constitution; for the High Steward now may summon them all: The Lord High Steward formerly summoned the Court; he summons it still: The nature of the Court is not altered by the majus or minus, any more than the King's Bench ceases to be the same Court, when there are three or four Judges in it.

That though this clause did not, as was said, pursue the end of the Bill; yet either House has a power of adding what they think may make it better: And though this is not of a different nature, there have been instances of additions of different natures: But this is so far from it, that it agrees entirely with it, and is as suitable and necessary as any part of it.

That the Commons were not well satisfied, when the commissions of the Judges run *durante bene placito*: And could it be thought reasonable, that the Lords, who are the supreme judicature, should not stay in their lives *quamdiu se bene gesserint*?

And

And, that though the King does now appoint the sheriffs, it was not always so: and, since the Crown has made them, the Commons have this for their security, That they may challenge thirty-five of the panel, peremptorily; and all the rest, for cause.

But that the judges and sheriffs are made before the crime committed; so that it is impossible for the judges or sheriffs to have a prejudice against any man: but the Lord High Steward is appointed after they know the prisoner; and he shall be tried according to the humour of the times they are in. There may be Lords inclined one way and the other: but, in this case, there is a strong thing joined with this passion; which is, their making their own fortunes by serving the present times.

That, since the trial of Peers, in time of Parliament, must be by the whole House; where is the inconvenience, that at all times they should be tried as in Parliament? It is a little favour the Lords ask in this clause, considering the privilege of Parliament, for three years last past, has been always subsisting, and is like to continue so during this war: so that the objection is taken away as to the present Government: for they will have the advantage of a parliamentary trial: and possibly, in times to come, there may be an inquisition for what is done now: and it will be well to have the fairest way of proceeding in that matter.

That, in the case of the Lord Delamere, several Lords were then in town*; and there were a great many of those Lords not chosen: And it is a great question, Whether that noble Lord had come off/as he did, if he had not received such notice from the Grand Jury, and every thing had not been made out so plain.

* See in the State Trials, Vol. IV. N^o 137, p. 210, the names of the Lords summoned by Lord Jefferies, appointed Lord High Steward for the trial of Lord Delamere, in 1685; amongst whom were several of the great officers of the Crown, and others devoted at that time to King James the II^d.—"The Lord High Treasurer of

England," "The Lord President of the Council," "The Lord Steward of the Household," "The Lord Chamberlain of the Household," "The Treasurer of the Household," "The Master General of the Ordnance," "Lord Godolphin, and Lord Churchill."

That the argument used by your Managers, "That they could not allow any thing that tends to any impunity," is a very large assertion; and may be an argument against the Bill; because it may happen, that by giving a copy of the indictment, and witnesses being upon their oaths, a guilty man may escape; and then he has an impunity. This is not intended: All that can be done in these cases is, to put in such reasonable caution, and so far as a Bill can provide for.

That this clause could not extend to the Bishops, for it relates only to trials out of Parliament; and they are only Peers in Parliament, where they take their privilege to hear, and then go out again, and do not vote in blood: and, by the word Peerefs, it must be understood of such Peers only, as are Peers in respect of their blood.

That the Lords were of opinion, That * Peers were sufficient to condemn a Peer: but this makes no alteration in the argument; for there is not much more difficulty in getting twelve than seven: Indeed, there might be a great difference, where a Crown or Government was not concerned.

That the excellency of a jury is, That they are taken ex vicineto: What is the reason of this? Why, in case of false witnesses, it is his neighbour that is to save the man: but what security have the Lords, when the Lords are picked out to try them, who are not of their acquaintance; and the Lords, who know the whole course of their lives to be contrary to what is sworn against them, shall not be chosen?

That it is implied by the commission of the Lord High Steward, That all the Peers should be summoned; for, by his commission all the Peers of the realm are commanded to attend upon him, and be obedient to him: so that the King does not only give liberty, but seems to command it.

* Sic Orig. The blank was probably intended to be filled with (seven). See p. 349. ad inum.

THAT the Managers for the Commons, by way of reply, said;

That this clause would alter the constitution of this court, and thereby a very considerable part of the constitution of the Government; and that for the worse.

That it is not to be granted, that any new law does alter the Constitution :

That a new law may be made to strengthen or restore the Constitution against the abuses; it may be declaratory, it may ascertain the things that before were left to reasonable discretion; which are but circumstances and accidents; and, notwithstanding such new laws, the substance of the Constitution remains the same :

So that, by this Bill, the person indicted is to have a copy of his indictment ten days before he shall plead: Whereas now, by the Common Law, he is to have the indictment read to him as oft as he needs and desires; and to have copies of so much of it as he has occasion to use; and reasonable time to plead :

That by this Bill, he is to have his witnesses sworn; which, in some learned men's opinions, was the law before: however, it is but a circumstance added to the testimony :

That by this Bill he is to have a copy of the panel before the trial: whereas, by the course now used, he hath a copy a reasonable time before :

And, that, by the law now, he is to have a reasonable time to prepare for his trial; which time this Bill ascertains by a number of days.

But that the alteration, by the clause in question, is in a most substantial part; and which highly affects the Constitution of the Government.

That our government is a monarchy: and it is a main part of the King's authority to administer justice by officers of his own appointing.

That the King makes sheriffs; who, for the trial of a Commoner, returns so many freeholders as are competent.

That the King makes the High Steward; who, for the trial of a Peer, summons so many Peers as are sufficient.

That, taking away these powers from the High Steward, and sheriff, it takes so much from the regal authority; and it will amount to no less than to render the subjects independent on the Crown, in the pleas of the Crown; wherein, above all other things, the life, peace, and safety of the Government is concerned.

That, if a like clause were brought in, That every Commoner should be tried by all the freeholders of the county that would appear, or such of them as they should depute, it could not well be denied, that this were a change in the Constitution of the Government.

That it may as well be said; That it is not any altering of the Constitution, to divest the Crown of the power of making judges in courts of law and equity, and other courts, or making justices of the peace, and other officers.

That it was granted in Parliament, by 28 Edward I. that the people of any county should chuse the sheriffs: but thereupon ensued such factious confusions and mischiefs in the country, that, by the desire of the people in Parliament, 9 Edward II. the power of making sheriffs was settled in the Crown.

That, though the High Steward be said to be the court; yet the Peers Triers are so necessary a part of the court; that the conviction, or acquittal, depends entirely on them: and therefore, not only the number of triers, but the nature of the court, may properly be affirmed to be altered by this clause.

That the Commons were surprized when they heard it alleged; That this court, and course of trial, was first introduced in Henry the Eighth's time, by Cardinal Wolsey, in the case of the Duke of Bucks; and that all trials of Peers before were in Parliament.

That

That the statute made the 15th Edward III. manifestly proves the contrary: It ordained, that Peers should be tried by their Peers in Parliament; but provides, That if any Peer would chuse to be tried elsewhere than in Parliament, he might.

That, indeed, the statute was repealed, 17 Edward III. because it was so injurious to the prerogative: But yet it shews there was then such a court and course of trials as this, out of Parliament: for they could not, in Edward the Third's time, divine, that there would be such a new court and manner of trial erected in Henry the Eighth's time.

That the trial of the Earl of H. 1 H. IV. reported in the Year Books is no more to be questioned than any other case there: and it is cited as authentic by Stamford, in his learned Treatise of the Pleas of the Crown: and his opinion also is, That this way of trial was meant by the "*Judicium Parium*," mentioned in Magna Charta: and Stamford is of great authority in this behalf; for that he was cotemporary to the reign of Henry VIIIth, and could not have been unacquainted with this innovation, if such there had been made in that time*.

And that the very clause of their Lordships now in question, doth affirm the legality of this way of trial: for it distinguishes treasons which corrupt the blood, from others; and leaves all other treasons, and all felonies, to be tried by Peers summoned by the High Steward, as it is now used: which shews too, that there is no great danger apprehended to the Peers by this kind of trial.

That the Commons do not admit, that a Peer can be convicted by seven Peers: there must be twelve, at least, to concur in the verdict: It is not only said by Lord Coke, but the law is, That no man shall suffer capitally ~~at~~ the King's suit, unless

* See Stamford's Pleas of the Crown, Book the 3d, ch. 1st, intitled, "*Triall per les Pieres*," in which, he states in what manner this Court of the High Steward is appointed and holden, p. 152.

his offence be found by twenty-four at least, that is, twelve to find the indictment, and twelve to find the verdict *.

And that there must be twelve Peers agree in the verdict, was resolved in the Lord Dacre's case, 26 Hen. VIIIth, which is remembered in Moore's Reports †.

And the case of every Peer that has been convicted, is a proof of this: for it cannot be shewn, that ever any Peer was convicted by fewer than twelve.

The Duodecemvirale Judicium, some time in use in foreign countries, was always approved, and established by the law of England; and understood to be that authority, to which the determination of contested facts is intrusted: and therefore, in all other commissions and precepts, as well as those of the High Steward, wherein the command is in general words; (viz. to return or summon tot et tales, such and so many persons, by whom the truth of the matter may be tried); it is to be answered and performed by the bringing of twelve persons, who are to agree in the determination of the matter inquired of.

And, as to that clause that requires all Peers to be attending, it is but a clause of the same form and nature, as is in commissions of Oyer and Terminer, and other commissions; and imports no more, than that all persons should attend, who are required to do so by law: and it can no more be inferred, from those words, That the High Steward is to summon all the Peers; than, from

* "Et nota, que le nombre des pieres, queux sount a tryer ascun seigneur, est 12, et ouster quants le Roy plerra. Mes nemy dedeins ou desoubz le nombre de 12. Come commen experyence nous infourma."—Stamford, Pl. Coro. p. 153. So in the Lord Dacre's case, 26 Hen. VI. reported in Kelyng's Reports, p. 56, it is said, "It was agreed by most of the Judges, that if all the Peers do not agree in their ver-

dict, then the verdict of the greatest part of them is a good verdict, so that there be 12 or more; therefore the use is, never to have less than 23 Peers for tryers; because that is the least number, to be sure of twelve to be of one mind."

† See in Moore's Reports, p. 622, the four several points, which the Judges are said to have determined in this case of the trial of Lord Dacre.

the like words in other commissions, all the freeholders are to be summoned.

It is the common notion of our law, that no man shall be convicted of a crime, but by the unanimous judgment of twelve unexceptionable persons summoned by the King's officer.

The Commons have liberty of challenging; because that fear, or corruption, or other cause of partiality, may be supposed among them.

The Lords have no challenges: but all Peers are esteemed unexceptionable, because nothing so mean and dishonourable is to be presumed among them.

Their Lordships ancestors chose to distinguish themselves from their inferiors; and always claimed and enjoyed a privilege to be intrusted otherwise than the Commons are; viz.

They are upon honour, not oath;

Are not challengeable;

Give their verdict *seriatim*;

May have more than twelve on a trial;

And have claimed a liberty to eat or drink before their verdict:

And they used to value themselves upon these things, as dignities and privileges.

Now the Commons, that are forbid to speak otherwise of the present Peers than of their ancestors, are to be excused, if they think no otherwise of them.

That the Commons observed, what their Lordships had alleged, concerning the inconveniencies or abuses that had been or might be in this way of trial, was grounded upon undue suppositions concerning the Peers, or upon mistakes, and not warranted by experience.

That they thought it a strange and ~~foreign~~ supposition, that a great and guilty minister, finding himself liable to an important next session of Parliament, should, by his power, procure himself

himself to be tried and acquitted by an inquest of persons, on purpose, by a plea of *Auterfoits* acquit, to prevent a second and true examination of his crimes; for he must be first indicted of his treason, and then run a hazard, whether his power will be, and continue, sufficient to oblige so many Peers to acquit him by an untrue verdict.

That there is no example of this kind: and, if such an unheard-of proceeding should ever happen, it is left to consideration, whether a Parliament would not vindicate the kingdom against so gross and fraudulent a contrivance.

That, besides that, the court, as it is to be ordered by this clause, would be no less liable to such abuse.

That their Lordships did not assign any sufficient instances of injustice in this court: and, perhaps, this court hath continued the most unblemished, in point of justice, of any court whatsoever.

That, in the few trials which have been there for treason, there have been two acquittals; viz. the Lord Dacre, and Duke of Somerset; besides that of the Lord Delamere.

That the Duke of Northumberland's crime was notorious, he having been in open rebellion against Queen Mary.

That if the Earl of Wiltshire had been forced to sit on the trial of his daughter Ann Boleyn, it seems to shew a great fairness: and, if the court had been constituted according to this clause, he must have been summoned; and if the trial had been in Parliament, he, as well as other Peers, had been obliged to come: but the tradition about that matter is rectified, by the discovery made by a reverend Prelate, in his History of the reformation (a book approved by their Lordships); where it is made appear, the Earl did not sit upon the trial of the Queen.

But that, if all power must be abolished which is possible to be abused, there must be no power left to the King, or Lords, or Commons; and perhaps there are not harder cases to be found, than

than those wherein all three have concurred; of which the attainting Cromwell Earl of Essex, without suffering him to come from the Tower to be heard, is an instance *.

That, if any inquisition may be made into what is now doing, it were better to lay aside the clause, that nobody may have any dependance, but upon the safety of the present Government.

That the High Steward is made *pro hac vice*, or after the crime, is no singular thing.

The Justices of Oyer and Terminer, and of Gaol Delivery, are generally made so twice a year, or oftener; and Sheriffs are appointed in every year, or oftener; and all hold their places during the King's pleasure.

And, notwithstanding this clause, the High Steward is still to be appointed by the King, in the same manner as before: and in all treasons, but those mentioned, and in all felonies, he continues to have the same power of trying a Peer by an inquest of Peers, summoned by his precept, as is now used; by which alone the lives and fortunes of Peers will remain exposed to as much danger as they were, if any there were, before this Bill.

That the Commons acknowledge they have known, that when a Peer hath stood indicted, sitting a Parliament, the indictment has been, by the King's writ of Certiorari, removed into the House of Peers, there to be tried by all the Peers: but they do not know, that of necessity that must be done, or that such Peer may not be tried in the ordinary court; and it would be highly inconvenient, in case of long adjournments, if it might not so be †.

But that it is no concluding argument, that, because there is this extraordinary way of trial by all the Peers, therefore the

* See this case of the Earl of Essex, before p. 84, N° 19. and the note.

† See the note in p. 336, which refers to

Lord Delamere's plea on this point, and the Lord High Steward's Lord Jefferies' answer to it.

ordinary, by a number of Peers, should be taken away ; no more than that, because there is such an ordinary, therefore the extraordinary should be taken away.

That there is also another way of trial, which, in capital offences, concerns the Peers too ; that is, by a Jury of Freeholders, which their Lordships, in this debate, did commend ; because those Freeholders were of the vicinage, and the prisoner might challenge thirty-five without cause, and any of the rest of the panel for cause : and by this the Peers, as well as Commons, are to be tried, in an appeal of murder, rape, or other felony : but it is supposed, their Lordships will not allow it a good argument, that therefore they should be ordered to be tried so in treason, and indictments of felony ; but they hold it a privilege to be tried, in such case, by their Peers, in the manner now used.

But that the method of trial, appointed by this clause, is worse than any of those now in being ; and it has nothing of the nature or virtue of a trial in Parliament ; for the Lords' House hath power to send for, and cause all Peers to come, as they did upon the trial of the late Lord Stafford : but, to this intended court, none are to come, but such as voluntarily will : nor is it required that there should be twelve, or any certain number ; if but two or three appear, it is enough ; and probably none will come, but the accomplices and abettors, and favourites, friends and relations of the party : nor is it possible to bring together all the Peers there, as in Parliament ; for, in Parliament, the House of Peers may appoint or adjourn the proceedings at or to any time or times, and as often as they think fit, till the House be full : but the proceedings of this court, before the High Steward, is the work but of one day.

That, in the last place, the Commons replied, That they did not find reason to pass this clause, from what was so much pressed by their Lordships, viz. That the clause did provide for such defence for the Peers, as would encourage them to venture
to

to join boldly with the Commons in asserting the public liberties :

For the Commons do not find, that, by the present constitution, the lives and fortunes of innocent Peers are, as their Lordships intimated, exposed to the will of a great and malicious Minister : and, if they were, they do not see that they would be protected by this provision, since it extends but to some treasons, and to no felonies : and they may say, it does not deserve the name of Adventure, for their Lordships to act only upon terms of perfect safety.

And that, on the other hand, the Commons apprehend it would afford too great a prospect of safety to guilty Peers ; and might embolden them to attempt against the Crown, or the public liberties.

That the Commons acknowledge, that these are good times ; and, if they are unquiet or unsafe, it is in relation to the Crown, and not to the Peers : the Peerage is in no danger ; the Peers have power enough ; and the Crown hath not too much ; nor ought to be rendered less safe.

That, therefore, the Commons would insist upon the old ways ; keep the balance of the Government as they found it ; and not change the laws of England, which hath been hitherto used and approved.

(Lords Journals.)

Die Lunæ, 18^o die Januarii, 1691.

THE Earl of Mulgrave reported from the Lords' Committees appointed to inspect Commissions for Lords High Stewards,

upon trials of Peers out of Parliament, “ That the Committee
 “ had examined all the Precedents since Henry the VIIIth’s time,
 “ and one in his time; one of which Precedents they have
 “ ordered to be brought into the House; and they find that
 “ every High Steward for such trials is directed, by Commis-
 “ sion under the Great Seal of England, to summon every person,
 “ who is a Peer to the said person tried; and that every precept
 “ issued from him is according to the same tenor; (videlicet),
 “ That every Peer should be summoned:” but they have also
 found, that in every return of such precept made by the Serjeant
 at Arms, there is mention made of a schedule or list of some
 “ particular Peers which he had then summoned, contrary to
 “ those general words both in the commissions and precepts;
 “ which schedule or list yet does not appear on any record,
 “ or in any office; nor will any person own the delivery of
 “ any such list, in order to those trials which have been of late
 “ years.”

Then part of the proceedings upon the trial of the Duke of Norfolk, were read, out of the record.

And after debate thereupon, and commissions for Lords High Stewards;

The question was proposed,

“ That it is the opinion of this House, upon search into
 “ the Precedents of all the commissions of High Stewards,
 “ since the reign of King Henry the VIIIth, That, both by the
 “ King’s commissions to the several Lords High Stewards, and
 “ by the precepts from the Lords High Stewards pursuant to
 “ those commissions, all the Peers of England were directed,
 “ under the Great Seal, to be summoned to the trial of every Peer
 “ that was to be tried.”

The previous question was put,

“ Whether this question shall be put.”

It was resolved in the affirmative.

Then the main question was put,

“ That it is the opinion of this House, upon search into
“ the Precedents of all the commissions of High Stewards since
“ the reign of Henry the VIIIth, That, both by the King’s
“ commissions to the several Lords High Stewards, and by the
“ precepts from the Lords High Stewards, pursuant to those
“ commissions, all the Peers of England were directed, under the
“ Great Seal, to be summoned to the trial of every Peer that was
“ to be tried.”

It was resolved in the affirmative.

A P P E N D I X, N° 4. (p. 72.)

*Die Mercurii, Primo die Maii, 1689.**Mr. Petyt's Report on Delays of Judgments, &c.*

THE Earl of Huntingdon acquainted the House, That he was ordered to report, from the Committee of Privileges, That, they finding the Statute of 14 E. III. cap. 5. intituled, “Delays of Judgments in other Courts shall be redressed in Parliament,” is still in force; by which Statute it is enacted, “That at every Parliament shall be chosen a Prelate, two Earls, and two Barons, who shall have commission from the King, to hear, by petition, all complaints of delays or grievances done to them, in the Chancery, King’s Bench, Common Pleas, and Exchequer:” Upon which, their Lordships having advised with Mr. Petyt, he delivered in a Report in writing, which their Lordships offer to the House to be read; which was read; (videlicet,)

“As concerning the Statute of the 14 Edw. III. whereby it is ordained, That delays of Judgments in other Courts, should be redressed in Parliament.”

“The Statute recites, That divers mischiefs had happened, for that in the Chancery, King’s Bench, Common Pleas, and Exchequer, &c. judgments had been delayed, sometimes for difficulty, and sometimes for divers opinions of the Judges, and sometimes for other causes; for which reasons it was enacted, That at every Parliament there should be chosen a Prelate, two Earls, and two Barons, who were to be commissioned to hear, by petition, such complaints of such delays and grievances, and

“ to cause to come before them the Judges, and the tenor of
 “ the records and proceſſes of judgments ſo delayed; and, by
 “ advice of the Chancellor and the Treafurer, and the Juſtices of
 “ both Benches, and as many of the King’s Counſel as they ſhould
 “ think fit, to direct what judgment the court ſhould give.

“ And in caſe it ſhould ſeem to them, that the difficulties be ſo
 “ great, that they may not well be determined without aſſent of
 “ the Parliament, that the ſaid tenor or tenors ſhould be brought
 “ by the ſaid Prelate, Earls, and Barons, into the next Parlia-
 “ ment; and there a final accord ſhould be taken, what judg-
 “ ment ought to be given in the caſe.”

“ I cannot now tell how well the ſtatute was executed in
 “ every Parliament in the long reign of Edw. III^d; but, no
 “ doubt, many examples may be found in the execution thereof,
 “ among the records in the Tower.

“ And this is certain, that, in 9^o Rich. II^d. there was a com-
 “ miſſion granted, wherein this Statute of the 14th of King Edward
 “ the III^d. is recited at large. The commiſſion was made to thir-
 “ teen Commiſſioners, de audiendo Querelam Thomæ Lovel, de
 “ Aſſenſu Parliamenti; commanding the Chancellor, the Trea-
 “ ſurer, the Juſtices, and others of the King’s Counſel, to at-
 “ tend and aſſiſt the ſaid Commiſſioners.

“ So that I conceive the Statute 14^o Edw. III^d. is ſtill in
 “ force; but there are two things, which will be neceſſary to
 “ put it in execution.

“ The firſt. is, That ſuch Prelate, Earls, and Barons,
 “ muſt be nominated by Aſſent of Parliament.

“ The ſecond is, That there muſt be a Commiſſion un-
 “ der the Great Seal granted by the King to them.

“ W^M P E T Y T.”

A P P E N D I X, N^o 5. (p. 124.)

Extract from Parliamentary History, Vol. VI. p. 464.

Remonstrance to Charles the First, from the House of Commons, respecting some Expressions in his Speech on the Subject of the Duke of Buckingham, Anno 1626.

Most Gracious Sovereign,

WHEREAS your Majesty hath been pleased of late, at fundry times, and by several means, to impart unto us your royal pleasure, touching some passages and proceedings in this present Parliament: we do first, with unspeakable joy and comfort, acknowledge your Majesty's grace and favour, in that it hath pleased you to cause it to be delivered unto us, by the Lord Keeper of your Great Seal, in your own royal presence, and before both Houses of Parliament, That never King was more loving to his people, nor better affected to the right use of Parliaments; withal professing your most gracious resolution to hear and redress our just grievances. And, with like comfort, we acknowledge your Majesty's goodness shining, at the very entrance of your glorious reign, in commanding the execution of the laws established to preserve the true religion of Almighty God, in whose service consisteth the happiness of all Kings and kingdoms.

Yet, let it not displease your Majesty, that we also express some sense of just grief, intermixed with that great joy, to see the careful proceedings of our sincere intentions so misreported as to have wrought effects unexpected, and we hope undeserved.

First, touching the charge against us in the matter concerning Mr. Coke:—We all sincerely protest, That neither the words
mentioned

mentioned in your Majesty's message, nor any other of seditious effect, were spoken by him ; as hath been resolved by the House, without one negative voice. Howsoever, in a speech occasionally uttered, he did let fall some few words which might admit an ill construction, whereat the House being displeased, at the delivery of them, as was expressed by a general and instant check, he forthwith so explained himself, and his intention, that, for the present, we did forbear to take them into consideration, which since we have done : and the effect thereof had before this appeared, if, by importunate business of your Majesty's service, we had not been interrupted.

The like interruption did also befall us in the case of Dr. Turner ; wherein the question being formally stated, a resolution was ordered to have been taken that very day, on which we received your Majesty's command to attend you.

But, for our own proceedings, we humbly beseech your Majesty to be truly informed, that, before that overture from Doctor Turner, (out of our great and necessary care for your honour and welfare of your realm) we had taken into serious consideration the evils which now afflict your people, and the causes of them, that we might apply ourselves unto the fittest remedies : in the pursuit whereof, our Committees (whatsoever they might have done) have in no particular proceeded otherwise, than either upon ground of knowledge in themselves, or proof by examination of witnesses, or other evidence.—In which course of service for the public good, as we have not swerved from the parliamentary ways of our predecessors, so we conceive that the discovery and reforming of errors, is so far from laying an aspersion upon the present time and government, that it is rather a great honour and happiness to both, yielding matter to great Princes, wherein to exercise and illustrate their noblest virtues.

And although the grievous complaints of the Merchants from all parts, together with the common service of the subjects well

affected to those who profess our religion, gave us occasion to debate some businesses that were partly foreign, and had relation to affairs of state; yet we beseech your Majesty to rest assured, it was exceeding far from our intention, either to traduce your counsellors, or disadvantage your negotiations.

And though some examples of great and potent Ministers or Princes, heretofore questioned in Parliament, have been alleged; yet was it without paralleling your Majesty's government, or councils, to any times at all, much less to times of exception.

Touching the letter of your Majesty's Secretary:—it was first alleged by your advocate for his own justification, and after, by direction of the Committee, produced to make good his allegation.

And for the search of the Signet Office:—the copy of a letter being divulged, as in your Majesty's name, with pregnant cause of suspicion, both in the body and direction thereof, to be suppositious; the Committee out of desire to be cleared therein, did, by their order, send some of themselves to the Signet Office, to search whether there were any records or letters of that nature, without warrant to the officer for any, much less for a general search.

But touching public Records:—we have not forbore, as often as our businesses have required, to make search into them; wherein we have done nothing unwarranted by the laws of your realm, and the constant usage of Parliaments.—And if, for the ease of their labours, any of our Committees have desired the help of the officers repertories, or breviats of direction, we conceive it is no more than any subject, in his own affairs, might have obtained for ordinary fees.

Now, concerning your Majesty's servants, and, namely, the Duke of Buckingham:—we humbly beseech your Majesty to be informed by us your faithful Commons, who can have no private end but your Majesty's service, and the good of our country,

“ That it hath been the ancient, constant, and undoubted right and usage of Parliaments, to question and complain of all persons, of what degree soever, found grievous to the common wealth, in abusing the power and trust committed to them by their Sovereign.” A course approved, not only by the examples in your father’s days, of famous memory, but by frequent precedents in the best and most glorious reigns of your noble progenitors, appearing both in records and histories; without which liberty in Parliament, no private man, no servant to a King, perhaps no counsellor, without exposing himself to the hazard of great enmity and prejudice, can be a means to call great officers into question for their misdemeanors; but the common wealth might languish under their pressures without redress: and whatsoever we shall do accordingly in this Parliament, we doubt not but it shall redound to the honour of the Crown and welfare of your subjects.

Lastly, we most humbly beseech your Majesty graciously to conceive, that though it hath been the long custom of Parliaments to handle the matter of supply with the last of their businesses; yet, at this time, out of extraordinary respect to your person, and care of your affairs, we have taken the same into more speedy consideration; and most happily, on the very day of your Majesty’s inauguration, with great alacrity and unanimous consent, after a short debate, we grew to the resolution for a present supply, well known to your Majesty.

To which, if addition may be made of other great things for your service, yet in consultation amongst us, we doubt not but it will appear, that we have not receded from the truth of our first intention, so to supply you, as may make you safe at home and feared abroad; especially if your Majesty shall be pleased to look upon the way intended in our promise, as well as to the measure of the gift agreed.

With the like humility, we beseech your Majesty not to give ear to the officious reports of private persons for their own ends, which hath occasioned so much loss of time ; nor to judge our proceedings whilst they are in agitation, but to be pleased to expect the issue and conclusion of our labours ; which, we are confident, will manifest and justify to your Majesty the sincerity and loyalty of our hearts, who shall ever place in a high degree of happiness the performing of that duty and service in Parliament, which may most tend to your Majesty's honour and the good of your kingdom.

APPENDIX, N° 6. (p. 36. and 177.)

Extract from the Lords Journal, the 29th of November, 1667.

*Report of the Free Conference touching Lord Clarendon's
Impeachment.*

NEXT, the Lord Chamberlain, and the other Lords appointed to manage the Free Conference with the House of Commons yesterday, reported the substance and effect of the said Free Conference, as followeth :

“ This Conference was managed, on the House of Commons part, by Sir Robert Howard, Mr. Vaughan, Mr. Swinfin, and Mr. Waller.

“ The introduction was made by my Lord Chamberlain ; who told the Commons, That this Free Conference was desired by them ; and, though that House had lately declined giving the Lords a Conference when desired, yet the House of Peers, upon this occasion, had dispensed with some forms, to keep a good correspondence with the House of Commons, and were willing to confer freely with them, and ready to hear what they had to say.

“ Sir Robert Howard was the first that opened the business. He said, This Conference was not upon particular account of any person, but in relation to public justice.

“ The Lords closed in the same, and were very glad it was so understood ; for they had no particular regard to the Earl of Clarendon in what they had resolved, but to the justice of the kingdom ; in the administration whereof in this particular ; nothing was ordered in the case of the Peer now impeached ;
“ which.

“ which they should not have insisted upon in the case of any
 “ Commoner.

“ Then Sir Robert Howard and the rest of the Commons pro-
 “ ceeded; and made the subject matter of this Free Conference
 “ to be some of the reasons formerly given by the House of Com-
 “ mons, which they enforced what they could; and the proceed-
 “ ings of the Earl of Strafford’s case, the Archbishop of Canterbury,
 “ Lord Keeper Finch, and Sir George Ratcliffe’s—but the pre-
 “ cedent chiefly pressed was, the Earl of Strafford’s; on which,
 “ by large discourse (which intimated their insisting mainly on
 “ that) they urged, that precedents did shew best the course of
 “ Parliaments, which was the law of Parliaments; and that the
 “ precedents they had vouched, especially that of the Earl of
 “ Strafford’s, were clear in the point; that the end of the Act of
 “ Repeal was to repeal the Act of Attainder, and the proceedings
 “ relating thereunto; that the manner of impeachment and com-
 “ mitment, and other proceedings thereupon, were still in force;
 “ and that the latest and newest precedents were the best. They
 “ descanted long upon the words of the Act of Repeal, to evince
 “ what they had said; and distinguished the first year of the
 “ Long Parliament, for gravity and wisdom, from the rest, which
 “ was disorderly and unquiet; and said, That these precedents
 “ were made in the first year; and that proceedings in times
 “ of peace, when the courts of Westminster were open, were
 “ always allowed for good; and concluded, that the Lords ought
 “ to commit upon every general impeachment of the Commons
 “ for treason: and this grew to be the question stated at this
 “ Conference; which the Commons affirmed, and the Lords
 “ denied.—Some things were also said by the Commons, of
 “ the credit that was to be given to all the Commons of
 “ England, which they represented; and that they could not be
 “ supposed to intend any thing herein but public justice and
 safety, &c.

“ The

“ The Lords answered, and argued from the very same Act
 “ for reverſing the Earl of Strafford’s attainder, as followeth :—
 “ That this precedent was not allowable, being in an ill time,
 “ and branded by an Act of Repeal ; by which it was clear, this
 “ very Parliament intended it ſhould never be made uſe of ; for,
 “ beſides that the Act of Attainder recites the very impeachment
 “ particularly, and other proceedings thereupon, and ſtands abſo-
 “ lutely and totally repealed ; which is enough to condemn the
 “ whole ; yet they were ſo careful that this precedent, which
 “ led on the other three, ſhould never riſe in judgment again,
 “ that they further enacted, in expreſs words, “ That all records
 “ and proceedings of Parliament relating to the ſaid attainder be
 “ wholly cancelled and taken off the file, or otherwiſe defaced
 “ and obliterated, to the intent the ſame may not be viſible in
 “ after-ages, or brought into example to the prejudice of any
 “ perſon whatſoever ;” in which general words, every circumſtance
 “ and paſſage of that precedent muſt needs be included, none being
 “ excepted ; ſo that this left the courſe of Parliament, for accuſa-
 “ tions and trials for treaſons, as it was before. And there were
 “ no other proceedings, previous to the ſaid attainder, but the ſaid
 “ impeachment upon trial, and proceedings thereupon.

“ The Lords ſaid, They could not allow all for good that was
 “ done in Parliament whilſt the courts of Weſtminſter ſat ; nor
 “ would the Commons, if they reviewed the tranſactions of
 “ the Long Parliament. They abſolutely denied the neweſt
 “ precedent, to be the beſt. Antiquity was always venerable ;
 “ laws and old precedents, with a conſtant courſe of them, were
 “ moſt to be eſteemed. They had both for them in this con-
 “ troverſy.

“ The Lords gave theſe further reaſons, in answer to the Com-
 “ mons, and to ſhew why they ought not, upon every general
 “ accuſation of treaſon by the Commons, to commit to cuſtody
 “ the perſon or perſons accuſed :—

“ That:

“ That there could be no precedent of commitment produced,
 “ upon a general accusation of treason, before the Earl of Straf-
 “ ford’s case; which must necessarily have been, to make it the
 “ course of Parliament. The last drops of a river make not a
 “ stream or course, but the constant current: so a new precedent,
 “ but of yesterday as it were, and within the sad memory of us all,
 “ could not be called the course of Parliament.

“ It seems contrary to natural justice and reason, that a person
 “ accused should be punished before he knows his crime; and,
 “ though the imprisonment may be said to be for custody,
 “ yet there is no person, that knows not his fault, but takes it
 “ for a punishment; and it is really so, if he come after to be
 “ acquitted.

“ It is not suitable to the dignity or trust of Judges in inferior
 “ courts, much less in Parliament, the highest court, that they
 “ should be kept ignorant of the crimes, whilst they are pressed to
 “ commit to prison upon a general mention of them; or that the
 “ prosecutors should conceal what they know from the Judges, or
 “ have ground to ask what they will, and not let the Judges have
 “ ground to proceed upon.

“ If the Lords ought to commit upon the Commons impeach-
 “ ment, they seem rather to be executors of process or orders,
 “ than Judges; which ever implies a power to consider, and do as
 “ they shall be satisfied in judgment.

“ The precedents are contrary; as 14° E. 2. M. 7; Archbishop
 “ Arundell’s case, 21 R. II; the Lord Stanley’s case, 38 H. VI;
 “ and William de la Pole, Duke of Suffolk’s case; as the Com-
 “ mons themselves, in the argument at the Free Conference, upon
 “ the Petition of Right, by Sir Edward Coke, acknowledged, and
 “ urged strongly, as being in the very point.—This was 28 H. VI.
 “ N° 16, &c.

“ Such

“ Such a course of proceeding would not leave it in the power
 “ of the House of Peers to preserve Magna Charta, and the
 “ Petition of Right (which favour liberty) from invasion; and
 “ herein the Lords insist not only for themselves, but for all the
 “ Commons.

“ Though this be a House of Commons excellently composed;
 “ yet the admitting this claim of theirs just or warrantable, if ever
 “ there should be a House of Commons ill disposed or engaged in
 “ faction, as such have been, they might, by pretence thereof,
 “ make dangerous inroads upon the justice and ancient govern-
 “ ment of the kingdom, terrify and discompose the highest judi-
 “ cature, and invade that freedom which ought to be in Parlia-
 “ ment, and indeed bring the House of Lords to as small a number
 “ as they please to leave unaccused.

“ Judges in inferior courts may bail for treason specified; *a*
 “ *majori*, may the House of Lords refuse to commit till specifica-
 “ tion, or bail after.

“ There are no real mischiefs or inconveniencies the other way;
 “ but many appear by committing, before the Judges be satisfied
 “ in the crimes.

“ The practice of all Judges and Justices, in favour of liberty,
 “ and to prevent oppression, is to examine upon oath the par-
 “ ticular crimes before commitment, that the ground may ap-
 “ pear to them for commitment; or else they are of duty to
 “ bail, where the offence is bailable, though the accusation may
 “ be laid to be treason; much more should the Parliament be
 “ careful herein, who give examples and precedents of justice to
 “ all other courts.

“ If the King and his Council are not to imprison without
 “ special crime, as the Commons now argue, and did so before
 “ in the Conference for the Petition of Right, to which the
 “ Lords agreed, and yet the King is *Caput Parliamenti*; whence

“ comes this power of the House of Commons by vote to enforce
 “ commitment ? and how dangerous is it to the subject !

“ The Petition of Right having concluded ‘ That no man
 “ ought to be imprisoned or detained without being charged with
 “ something to which they might make answer according to
 “ law ;’ how will it stand with that to commit upon generals, to
 “ which no man can make answer, or defend himself ?

“ There were no new reasons offered by the House of Com-
 “ mons ; and therefore the Lords told them, That, (having con-
 “ sidered of those they had given, and over-ruled them) after a
 “ rule twice given by the highest court, it is not to be disputed,
 “ but the parties must submit ; or, as they resolved last session,
 “ there could be no proceedings or dispatch in causes.

“ At this Conference Mr. Vaughan said, The House of
 “ Commons do think the judicature so well and safely lodged in
 “ the House of Lords, that the Commons do not wish any part
 “ of it.

“ The Commons would not agree, that the case of William
 “ de la Pole was upon the impeachment of the House of Com-
 “ mons ; and said, That the case of Archbishop Arundell was
 “ repealed, 1 H. IV.—But the first the Lords evinced clearly,
 “ by the record, which was present ; and the repeal of Arundell’s
 “ case did not weaken, but strengthen it as a precedent in this
 “ case, being in the repeal it was not in the least impeached in
 “ the point the Lords vouched it for. And the chief ground
 “ for repealing the acts of that Parliament was, for the hard
 “ measure it shewed to the House of York ; for maintenance of
 “ whose title the said Archbishop was a chief instrument.

“ Some Members of the House of Commons urged their former
 “ third reason before, That if, before securing the person, the
 “ special matter of treason should be alledged, it would be a ready
 “ course that all complices in the treason might make their escape,

“ or quicken the execution of the treason intended, to secure
“ themselves the better thereby.

“ To which the Lords made answer, That it would be very
“ hard with the subject, if they should be committed when neither
“ the Judge nor the accuser did know the crime; and if, in this
“ case, the House of Commons, who are the accuser, did know it,
“ they might safely impart it to the Lords; for though in five
“ hundred counsellors there may be allowed to be wisdom, yet
“ there is not to be expected secrecy.”

A P P E N D I X, N° 7. (p. 189 and 193.)

Extract from the Commons Journal, 26th of May, 1679.

Mr. Sacheverell's Report of Reasons for preventing Bishops voting on Impeachments for capital Offences: and respecting the Invalidity of Lord Danby's Pardon.

MR. Sacheverell reports, from the Committee appointed to draw up reasons, why this House cannot proceed to the trial of the Lords, before judgment given upon the Earl of Danby's plea of his pardon—and the point of the Bishops not voting in any of the proceedings upon impeachments for capital offences, and the methods of proceedings, are adjusted; That the Committee had agreed upon an answer to be returned to the last message of the House of Peers, touching their appointment of the trial of the five Lords in the Tower to be on Tuesday next; together with reasons for their insisting upon their former vote: which he read in his place; and afterwards delivered the same in at the Clerk's Table: where the same were again read; and, with some amendments made at the table, upon the question agreed; and are as followeth; viz.

The Commons have always desired, that a good correspondence may be preserved between the two Houses.

There is now depending, between your Lordships and the Commons, a matter of the greatest weight; in the transaction of which, your Lordships seem to apprehend some difficulty in the matter proposed by the Commons.

To clear this the Commons have desired this Conference; and by it they hope to manifest to your Lordships, that the propositions
of

of the House of Commons, made by their Committee, in relation to the trial of the Lords in the Tower, have been only such as have been well warranted by the laws of Parliament, and constitution of the government; and in no sort intrench upon the judicature of the Peers; but are most necessary to be insisted upon, that the ancient rights of judicature in Parliament may be maintained.

The Commons readily acknowledge, that the crimes charged upon the Earl of Powys, Viscount Stafford, Lord Petre, Lord Arundell of Wardour, and Lord Bellasysse, are of deep guilt, and call for speedy justice; but withal they hold any change in judicature in Parliament, made without consent in full Parliament, to be of pernicious consequence, both to his Majesty and his subjects; and conceive themselves obliged to transmit to their posterity all the rights, which, of this kind, they have received from their ancestors. By putting your Lordships in mind of the progress that hath already been between the two Houses, in relation to the propositions made by the Commons, and the reasonableness of the propositions themselves, they doubt not to make it appear, that their aim hath been no other than to avoid such consequence, and preserve such right, and that there is no delay of justice on their part: and, to that end, do offer to your Lordships the ensuing reasons and narrative.

That the Commons, in bringing the Earl of Danby to justice, and discovery of that execrable and traitorous conspiracy of which the five Lords now stand impeached (and for which some of their wicked accomplices have already undergone the sentence of the law, as traitors and murderers), have laboured under great difficulties, is not unknown to your Lordships: that, upon the impeachment of the House of Commons against the Earl of Danby for high treason, and other high crimes, misdemeanors, and offences, even the common justice of sequestering him from Parliament,

liament, and forthwith committing him to safe custody, was then required by the Commons, and denied by the House of Peers ; though he then sat in their House : of which your Lordships have been so sensible, that, at a Free Conference, the tenth of April last, your Lordships declared, “ That it was the right of the Commons, “ and well warranted by precedents of former ages, that upon an “ impeachment of the Commons, a Peer so impeached ought of “ right to be ordered to withdraw ; and then to be committed.” And, had not that justice been denied to the Commons, great part of this session of Parliament, which hath been spent in framing and adjusting a Bill for causing the Earl of Danby to appear, and answer that justice from which he was fled, had been saved ; and had been employed for the preservation of his Majesty’s person and the security of the nation, and in prosecution of the other five Lords : neither had he had the opportunity of procuring for himself that illegal pardon, which bears date the first of March last past ; and which he hath now pleaded in bar of this impeachment ; nor of wasting of so great a portion of the treasury of the kingdom, as he hath done since the Commons exhibited their articles of impeachment against him.

After which time thus lost, by reason of the denial of that justice which of right belonged to the Commons, upon their impeachment, the said Bill being ready for the Royal Assent, the Earl of Danby surrendered himself ; and, by your Lordships order of the sixteenth of April last, was committed to the Tower : after which, he pleaded the said pardon ; and, being pressed, did at length declare, That he would rely upon and abide by that plea. Which pardon pleaded being illegal and void, and so ought not to bar or preclude the Commons from having justice upon their impeachment ; they did thereupon, with their Speaker, on the fifth of May instant, in the names of themselves and of all the Commons of England, demand judgment against the said Earl, upon their impeachment ; not doubting but that your Lordships intended,

intended, in all proceedings upon the impeachment, to follow the usual course and methods of Parliament.

But the Commons were not a little surprized by the message from your Lordships, delivered on the seventh of May; thereby acquainting them, That as well the Lords Spiritual as Temporal had ordered, That the tenth of May instant should be the day for hearing the Earl of Danby, to make good his plea of pardon; and that on the thirteenth of May, the other five Lords impeached should be brought to their trial: and that your Lordships had addressed his Majesty, for naming a Lord High Steward, as well in the case of the Earl of Danby, as of the other five Lords.

Upon consideration of the said message, the Commons found, that the admitting the Lords Spiritual to exercise jurisdiction in these cases, was an alteration in the judicature in Parliament; and which extended as well to the proceedings against the five Lords, as against the Earl of Danby: and that, if a Lord High Steward be necessary upon trials on impeachments of the Commons, the power of judicature in Parliament, upon impeachments, might be defeated, by suspending or denying a commission to constitute a Lord High Steward: and that the said days of trial, appointed by your Lordships, were so near to the time of your said message, that the matters and the methods of proceedings upon the trials could not be adjusted, by Conferences between the two Houses, before the day nominated; and consequently the Commons could not proceed to the trial, unless the zeal which they had for speedy judgment against the Earl of Danby (that so they might proceed to the trial of the other five Lords) might induce them, at this juncture, both to admit of the enlargement of your Lordships jurisdiction, and sit down under those or many other hardships (though with the hazard of the Commons power of impeachment for the time to come) rather than the trial of the said five Lords should be deferred for some short time, whilst these matters might be agreed on and settled.

For reconciling differences in these great and weighty matters, and for saving that time which would necessarily have been spent in debates at Conferences betwixt the two Houses; and for expediting the trial; without giving up the power of impeachments, or rendering them ineffectual; the Commons thought fit to propose to your Lordships, That a Committee of both Houses might be appointed for this purpose: at which Committee (when agreed to by your Lordships) it was first proposed, That the time of the trial of the Lords in the Tower should be put off, till the other matters were adjusted: and it was then agreed, that the propositions, as to the time of trial, should be the last thing considered: and that the effect of this agreement stands reported upon your Lordships books.

After which, the Commons communicated to your Lordships, by your Committee, a vote of theirs; viz. That the Committee of the Commons should insist upon the former vote of their House: and that the Lords Spiritual ought not to have any vote in any proceedings against the Lords in the Tower: and that, when that matter should be settled, and the methods of proceedings adjusted, the Commons would be then ready to proceed upon the trial of the pardon of the Earl of Danby, against whom they had before demanded judgment; and afterwards to the trial of the other five Lords in the Tower: which vote extended, as well to the Earl of Danby as the other five Lords. But the Commons as yet received nothing from your Lordships towards an answer of that vote, save that your Lordships have acquainted them, That the Bishops have asked leave of the House of Peers, that they might withdraw themselves from the trial of the said five Lords, with liberty of entering their usual protestations.

And though the Commons have almost daily declared to your Lordships Committee, That that was a necessary point of right to be settled before the trials; and offered to debate the same; your Committee always answered, That they had not any power from
your

your Lordships, either to confer upon, or to give any answer concerning that matter : and yet your Lordships, without giving the Commons any satisfactory answer to the said vote, or permitting any Conference or debate thereupon, and contrary to the said agreement, did, on Thursday the fourteenth of May, send a message to the Commons, declaring, that the Lords Spiritual, as well as Temporal, had ordered, That the twenty-seventh of this instant May be appointed for the trial of the five Lords : so that the Commons cannot but apprehend, that your Lordships have not only departed from what was agreed on ; and, in effect, laid aside that Committee which was constituted for preserving a good understanding betwixt the two Houses, and better dispatch of the weighty affairs now depending in Parliament ; but must needs conclude, from the said message and vote of your Lordships, on the fourteenth of May, that the Lords Spiritual have a right to stay, and sit till the court proceeds to the vote of Guilty or Not guilty : and, from the Bishops asking leave (as appears by your Lordships books) two days after your said vote, that they might withdraw themselves from the trial of the said Lords, with liberty of entering their usual protestations ; and by their persisting still to go on, and give their votes, in proceedings upon the impeachment ; that their desire of leave to withdraw at the said trial, is only an evasive answer to the forementioned vote of the Commons ; and chiefly intended as an argument for a right of judicature in proceedings upon impeachments ; and as a reason to judge of the Earl of Danby's plea of his pardon, and upon those and other like impeachments ; although no such power was ever claimed by their predecessors, but is utterly denied by the Commons : and the Commons are the rather induced to believe it so intended, because the very asking leave to withdraw seems to imply a right to be there ; and that they cannot be absent without it ; because, by this way, they would have it in their power, whether or no, for the future, either in the Earl of Danby's case, or

any other, they will ever ask leave to be absent; and the Temporal Lords a like power of denying leave, if that should be admitted once necessary.

The Commons, therefore, are obliged not to proceed to the trial of any of the five Lords, the twenty-seventh of this instant May, but to adhere to their former vote: and for their so doing, besides what hath been now, and formerly, by them said to your Lordships, do offer you these reasons following: (1.) Because your Lordships have received the Earl of Danby's plea of his pardon, with a very long and unusual protestation; wherein he hath aspersed his Majesty by false suggestions; as if his Majesty had commanded or countenanced the crimes he stands charged with; and particularly suppressing and discouraging the discovery of the plot, and endeavouring to introduce an arbitrary and tyrannical way of government; which remains as a scandal upon record against his Majesty, tending to render his person and government odious to his people; against which it ought to be the principal care of both Houses to vindicate his Majesty, by doing justice upon the said Earl.

(2.) The setting up a pardon to be a bar of an impeachment, defeats the whole use and effect of impeachments: for, should this point be admitted, or stand doubted, it would totally discourage the exhibiting any for the future; whereby the chief institution for the preservation of the government would be destroyed, and consequently the government itself: and therefore the case of the said Earl, which in consequence concerns all impeachments, ought to be determined before that of the said five Lords, which is but their particular case.

And, without resorting to many authorities of greater antiquity, the Commons desire your Lordships to take notice, with the same regard they do, of the declaration which that excellent Prince King Charles the First, of blessed memory, made in this behalf, in his answer to the nineteen propositions of both Houses of

Parliament : wherein, stating the several parts of this regulated monarchy, he says, " The King, the House of Lords, and the House of Commons, have each particular privileges : " and, amongst those which belong to the King, he reckons power of pardoning : after the enumerating of which, and other his prerogatives, his said Majesty adds thus again, " That the Prince may " not make use of this high and perpetual power, to the hurt of " those for whose good he hath it ; and make use of the name of " public necessity, for the gain of his private favourites and followers, to the detriment of his people."

The House of Commons (an excellent conserver of liberty) is solely entrusted with the first propositions concerning the levies of monies, and the impeaching of those, who, for their own ends, though countenanced by any surreptitiously gotten command of the King, have violated that law, which he is bound (when he knows it) to protect ; and to the protection of which they are bound to advise him, at least not to serve him in the contrary :

And the Lords, being entrusted with the judicatory power, are an excellent screen and bank between the Prince and the people, to assist each against any incroachments of the other ; and, by just judgment, to preserve that law which ought to be the rule of every one of the three.

Therefore, the power legally placed in both Houses, is more than sufficient to preserve and restrain the power of tyranny.

(3.) Until the Commons of England have right done them against this plea of pardon, they may justly apprehend, that the whole justice of the kingdom, in the case of the five Lords, may be obstructed and defeated by pardons of the like nature.

(4.) An impeachment is virtually the voice of every particular subject of this kingdom, crying out against an oppression, by which every member of that body is equally wounded : and it would prove a matter of ill consequence, that the universality of the people should have occasion ministered and continued to them,

to be apprehensive of utmost danger from the Crown, whereby they of right expect preservation.

(5.) The Commons exhibited articles of impeachment against the Earl of Danby, before any against the other five Lords; and demanded judgment upon those articles: whereupon your Lordships have appointed the trial of the said Earl before that of the other five Lords; now your Lordships having since inverted that order, gives a great cause of doubt to the House of Commons, and raises a jealousy in the hearts of all the Commons of England, that, if they should proceed upon the trial of the said five Lords in the first place, not only justice would be obstructed in the case of those Lords, but that they shall never have right done them in the matter of the plea of pardon: which is of so fatal consequence to the whole kingdom, and a new device to frustrate public justice in Parliament.

Which reasons and matters being duly weighed by your Lordships, the Commons doubt not but your Lordships will receive satisfaction concerning their propositions and proceedings; and will agree, that the Commons ought not, nor cannot, without deserting their trust, depart from their former vote communicated to your Lordships—"That the Lords Spiritual ought not to have any vote in any proceedings against the Lords in the Tower." And, when that matter shall be settled, and the methods of proceedings adjusted, the Commons will then be ready to proceed upon the trial of the Earl of Danby, against whom they have already demanded judgment; and afterwards to the trial of the other five Lords in the Tower.

A P P E N D I X, N° 8. (p. 200.)

Extracts from Lords and Commons Journals, in 1681, respecting the Impeachment of Fitzharris.

Die Sabbati, 26° die Martii, 1681.

A Message was brought from the House of Commons, by Sir Leolin Jenkins, and others, in these words :

“ The Commons of England, assembled in Parliament, having
“ received information of divers traitorous practices and designs of
“ Edward Fitzharris, have commanded me to impeach the said
“ Edward Fitzharris of high treason : and I do here, in their
“ names, and in the names of all the Commons of England, im-
“ peach Edward Fitzharris of high treason.

“ They have further commanded me to acquaint your Lord-
“ ships, that they will, within convenient time, exhibit to your
“ Lordships the articles of charge against him.”

Mr. Attorney General gave the House an account of the examinations taken against Edward Fitzharris ; and said, “ He had
“ an order of the King’s, dated the 9th of March instant, to pro-
“ secute the said Fitzharris at law ; and accordingly he hath pre-
“ pared an indictment against him at law.”

And, after a long debate ;

The question was put, “ Whether Edward Fitzharris shall be
“ proceeded with according to the course of the common law, and
“ not by way of impeachment in Parliament, at this time ?”

It was resolved in the affirmative.

Memorandum, That before the putting the above ques-
tion, leave was asked for entering protestations ; which
was granted.

“ Dissidentibus,.

“ Dissidentibus,

“ Because that in all ages, it hath been an undoubted right of
 “ the Commons to impeach before the Lords any subject, for
 “ treasons or any crime whatsoever; and the reason is, because
 “ great offences, that influence the Government, are most effectually
 “ determined in Parliament.

“ We cannot reject the impeachment of the Commons, because
 “ that suit or complaint can be determined no where else: for if
 “ the party impeached should be indicted in the King’s Bench, or
 “ in any other court, for the same offence, yet it is not the same
 “ suit; for an impeachment is at the suit of the people, and they
 “ have an interest in it; but an indictment is the suit of the
 “ King. For one and the same offence may entitle several persons
 “ to several suits; as, if a murder be committed, the King
 “ may indict at his suit, or the heir or the wife of the party murdered
 “ may bring in an appeal; and the King cannot release
 “ that appeal, nor his indictment prevent the proceedings in the
 “ appeal, because the appeal is the suit of the party, and he hath
 “ an interest in it.

“ It is, as we conceive, an absolute denial of justice, in regard
 “ (as ’tis said before) the same suit can be tried no where else.
 “ The House of Peers, as to impeachments, proceed by virtue of
 “ their judicial power, and not by their legislative; and, as to
 “ that, act as a court of record, and can deny suitors (especially
 “ the Commons of England) that bring legal complaints before
 “ them, no more than the Justices of Westminster Hall, or other
 “ courts, can deny any suit, or criminal cause, that is regularly
 “ commenced before them.

“ Our law saith, in the person of the King, *Nulli negabimus*
 “ *Justitiam*, We will deny justice to no single person: yet here,
 “ as we apprehend, justice is denied to the whole body of the
 “ people.

“ And this may be interpreted an exercising of an arbitrary
 power;

“power; and will, as we fear, have influences upon the Constitu-
 “tion of the English government, and be an encouragement to all
 “inferior courts to exercise the same arbitrary power, by denying
 “the presentments of grand juries, &c. ; for which, at this time,
 “the Chief Justice stands impeached in the House of Peers.

“This proceeding may misrepresent the House of Peers to the
 “King and people, especially at this time; and the more in
 “the particular case of Edward Fitzharris, who is publicly
 “known to be concerned in vile and horrid treasons against
 “his Majesty, and a great conspirator in the Popish Plot, to
 “murder the King, and destroy and subvert the Protestant
 “religion.

“Kent,

“Huntingdon,

“Monmouth,

“Bedford,

“Salisbury,

“Pagett,

“Clare,

“Effex,

“Shaftesbury,

“Sunderland,

“Stamford,

“P. Wharton,

“Mordaunt,

“Grey,

“C. Cornwallis,

“J. Lovelace,

“Macclesfield,

“Herbert,

“Westmoreland,

“Crewe.”

Commons Journal, 26th of March, 1681.

THE House being informed, That the Lords had refused
 to proceed upon the impeachment of the Commons against
 Edward Fitzharris; and had directed, that he should be proceeded
 against at the common law;

. And.

And a debate arising in the House thereupon ;

Resolved, That it is the undoubted right of the Commons in Parliament assembled, to impeach, before the Lords in Parliament, any Peer or Commoner for treason, or any other crime or misdemeanor : and that the refusal of the Lords to proceed in Parliament upon such impeachment is a denial of justice, and a violation of the constitution of Parliaments.

Resolved, That in the case of Edward Fitzharris, who, by the Commons, had been impeached for high treason before the Lords, with a declaration, that in convenient time they would bring up the articles against him—for the Lords to resolve, that the said Edward Fitzharris should be proceeded with according to the course of the common law, and not by way of impeachment in Parliament, at this time, is a denial of justice, and a violation of the constitution of Parliaments, and an obstruction to the further discovery of the Popish Plot, and of great danger to his Majesty's person, and the Protestant religion.

Resolved, That for any inferior court to proceed against Edward Fitzharris, or any other person, lying under an impeachment in Parliament, for the same crimes for which he or they stand impeached, is a high breach of the privilege of Parliament.

APPENDIX, N° 9. (p. 36, and 210.)

Extracts from the Lords Journal, on the Impeachment of Lord Mordaunt, in 1666.

Die Veneris, 1° die Februarii, 1666.

A Message was brought from the House of Commons, by Mr. Seymour, and others :

To desire a Conference touching the manner of the proceedings upon the impeachment against the Lord Viscount Mordaunt.

The answer returned was :

That their Lordships have taken their message into consideration, and will send an answer by messengers of their own.

Upon this message it is ordered, That the Committee for privileges do meet to-morrow in the afternoon, and consider whether ever the House of Commons desired any Conferences concerning the manner of proceeding upon judicature before their Lordships ; and to search what messages and proceedings have been upon cases of judicature ; and to report the same to this House.

Die Lunæ, 4° die Februarii.

THE Lord Chamberlain reported, “ That the Committee of Privileges have considered of some precedents concerning the message from the House of Commons, concerning the manner of proceeding upon the impeachment against the Lord Viscount Mordaunt ; and their Lordships opinion is, That none of those precedents they have seen do come home to the business ; but,

“ the precedents being ready, they leave it to their Lordships
 “ pleasure, whether to peruse any of them.”

The House commanded these precedents following to be read ;
 as, *Primo Jacobi*, 26 *Maii* ; a message from the House of Com-
 mons, concerning the Bishop of Bristol, who was complained of
 for writing a book against the Union of England and Scotland ;
 and, *ultimo Maii*, there was a meeting between Select Committees
 of both Houses about the same ; and 5th of June, the said Bishop
 made an acknowledgment of his error, before a Committee of both
 Houses.

Another precedent was in 12^o *Jacobi*, 28th May ; a message
 was * brought from the House of Commons, against the Bishop
 of Lyncolne, for some words he spoke in the Lords House.

The 4th of June, another message was brought from the House
 of Commons, against that business.

After a serious consideration and debate ;

The question being put, “ Whether to grant a Conference
 “ with the House of Commons, upon the desire of a late message †
 “ from the House of Commons, concerning the manner of
 “ proceedings upon the impeachment of Lord Viscount Mor-
 “ daunt ;”

It was resolved in the affirmative.

Memorandum, That these Lords following, before the
 putting of the aforesaid question, desired leave to enter
 their dissents, if the question was carried in the affirma-
 tive : which was granted ; and accordingly entered their
 dissents, as followeth :

“ The reason why we have desired the leave of the Lords to
 “ enter our dissents to the foregoing vote is, because we believe
 “ the conferring with the House of Commons, upon a matter only
 “ relating to the manner of proceedings in judicature, as we

• Deest in Originali.

† Origin. with.

“humbly conceive this to be, is a very great derogation to the
“privileges of this House. We do therefore enter our dissents
“accordingly.”

“Dorchester, J. Bridgewater, Howard of Ch.”

A message was sent to the House of Commons, by Sir William Child and Sir Justinian Lewin :

To let them know, that their Lordships are now ready to give them a present Conference, in the Painted Chamber, by a Committee of both Houses, touching their message concerning the impeachment against the Lord Viscount Mordaunt.

The messengers returned this answer :

That they have delivered their message to the House of Commons.

The House of Commons being ready, this House was adjourned during pleasure, and the Lords went to the Conference ; which being ended, the House was resumed.

The Earl of Anglesey reported the effect of the late Conference with the House of Commons, concerning the business of the Lord Viscount Mordaunt's impeachment :—

“The Commons of England, in Parliament assembled, desired
“this Conference, to continue a good correspondency betwixt
“the two Houses, and to preserve the ancient manner of proceedings in Parliament, in taking notice of their Lordships last
“answer, ‘adjudging it a right inherent in every court, to order
“and direct such circumstances, and matters of form, that can have
“no influence to the prejudice of justice, in such a way as they
“shall judge fit, where the same are not settled otherwise by any
“positive rule.’

“The Commons conceive, that the first part, the admitting
“the Lord Mordaunt to the place now given him upon his trial,
“may have influence to the prejudice of justice, by the intimidating of witnesses, when they shall see the Lord Mordaunt admitted to so extraordinary a favour, being a person

“ of great command, and divers of the witnesses living under his
“ command.

“ As to the other part of the Lords answer, ‘ That all courts
“ have power to settle circumstances in matter of form, that
“ have no influence to the prejudice of justice, in such way as they
“ shall judge fit, where it is not settled by any positive rule;’
“ the Commons conceive that precedents amount to a positive
“ rule; and the manner of persons accused appearing at their
“ trials was settled in the Earl of Middlesex’s case before cited, and
“ that was ruled by the search of precedents.

And they added, that, as they are very tender of the rights
“ and privileges of their Lordships, so they hope their Lordships
“ will be of theirs; and concluded, that when this point of form
“ shall be settled, by the Lord Mordaunt’s coming to the Bar, they
“ shall be ready, according to their Lordships wish, to proceed to
“ matter of substance.”

Upon serious consideration hereof, the House resolved, To let
the House of Commons know, the Lords are resolved, that their
former answer, given to the House of Commons the 28th day of
January last, and confirmed the 31st of January, shall stand; and
a Conference to be desired, wherein the Lords that are to manage
the Conference are to signify their Lordships continuance of their
former order: in which their Lordships are further confirmed by
the precedent of the Bishop of Llandaph’s case, 18^o Jacobi, and
the Earl of Stamford’s case, 1645; and to let them know further,
that their Lordships will be ready to-morrow morning to proceed
in the business.

A message was sent to the House of Commons, by Sir William
Child and Sir Justinian Lewin:

To let them know, that this House intends to sit this afternoon,
at five of the clock; at which time their Lordships desire a
Conference, by a Committee of both Houses, in the Painted
Chamber,

Chamber, concerning the subject-matter of the last Conference, touching the impeachment of the Lord Viscount Mordaunt.

Die Lunæ, 4^o die Februarii, post Meridiem.

THE messengers sent to the House of Commons return with this answer:

That the Commons will give a Conference, as was desired this morning.

The House was adjourned during pleasure, and the Lords went to the Conference; which being ended, the House was resumed.

And the Earl of Anglesey reported, "That the Lords that managed this Conference had obeyed their Lordship's direction, in urging those precedents as were given them in charge."

Die Martis, 5^o die Februarii.

A MESSAGE was brought from the House of Commons, by Sir Robert Holt, and others; who said, "He was commanded by the Commons to desire a Free Conference, upon the subject-matter of the last Conference, concerning the impeachment against the Lord Viscount Mordaunt."

The House taking this message into serious consideration; And, after a long debate,

The question being put, "Whether to grant a Free Conference to the House of Commons in this matter;"

It was resolved in the negative.

These Lords following, before the putting of the abovesaid question, desired leave to enter their dissents, if the question was carried

carried in the negative : which was granted; and accordingly do enter their dissents, by subscribing their names. .

* J. Robertes, Lindsey,

* Basil Denbigh, Awdley,
Northampton,

* Bolingbroke,

* The denial of a Conference, which is the only way of keeping a good and right correspondence between the two Houses of Parliament, being ever unfit ; I enter my dissent.

“Dover.”

The messengers of the House of Commons being called in ; the Speaker, by directions of the House, gave them this answer :

“ That the Lords have already stated the manner of proceedings in the impeachment of the Lord Mordaunt ; and have declared it in their last Conference, and in that Conference gave the House of Commons notice that they were ready to proceed this morning in that business ; they adhere to their former resolution, and are ready to proceed in the trial.”

Die Mercurii, 6^o die Februarii.

A MESSAGE was brought from the House of Commons, by Sir Robert Atkins and others :

To desire a Conference, upon an answer delivered to their messengers, who desired a Free Conference with their Lordships, upon the impeachment of the Lord Viscount Mordaunt.

The answer returned was :

That their Lordships will take their message into consideration, and will send an answer by messengers of their own.

* These three names are twice entered ; being wrote by the Clerk, as well as signed by the Peers.

Die

Die Jowis, 7^e die Februarii.

A MESSAGE was sent to the House of Commons, by Sir William Childe and Sir Nathaniell Hobart :

To let them know, that the Lords will be ready to give a Conference, by a Committee of both Houses, at eleven of the clock, in the Painted Chamber, upon the matter they desired a Conference yesterday.

The messengers sent to the House of Commons return this answer :

That they will come to the Conference, as is desired.

These Lords following were appointed to report this Conference :

Comes Bridgwater,	Epus. Exon.	Ds. Lucas.
Comes Denbigh.	Epus. Rochester,	Ds. Ashley.
Comes Anglesey.		

The Commons being come, the House was adjourned during pleasure, and the Lords went to the Conference; which being ended, the House was resumed.

The Earl of Anglesey reported the effect of the Conference with the House of Commons, which was managed by Sir Robert Atkins; who said, " That the House of Commons have desired " this Conference concerning their Lordships answer to a message " concerning a Free Conference. In their Lordships answer, in " effect, their Lordships denied a Free Conference. He said, he " was commanded to acquaint their Lordships, That Conferences, " and Free Conferences, when desired, are essential to the pro- " ceedings of Parliament, the only means to preserve the good " correspondence between the two Houses of Parliament; and " the denial thereof, destructive to the proceedings of Parliament, " and unprecedented."

Upon a serious debate hereof;

The question being put, “ Whether to desire a Free
 “ Conference from the House of Commons, upon the
 “ subject-matter of the last Conference ;”

It was resolved in the affirmative.

A message was sent to the House of Commons, by Sir William Childe and Sir Nathaniell Hobart :

To desire a present Free Conference, in the Painted Chamber, by a Committee of both Houses, concerning the subject-matter of their last Conference.

The messengers return with this answer :

That the House of Commons will give a Free Conference as is desired.

The same Lords as reported the last Conference, are appointed to manage this Free Conference ; and the House gave them these directions :

“ First, To let the Commons understand, that this Conference
 “ their Lordships desire, not in reference to the Free Conference
 “ lately desired by them, but in relation to the assertion of the
 “ Commons in their last Conference, which their Lordships can no
 “ way allow ; and therefore commanded the Lords that are to
 “ manage this Free Conference, to justify the proceedings of their
 “ Lordships, so as to make it appear to the House of Commons
 “ that what they have done is neither destructive to the proceed-
 “ ings of Parliament, nor unprecedented.

“ Then to shew the precedent of the 1st of Henry the IVth,
 “ N° 79, about judicature in Parliament.

“ And to urge the precedent of 12 *Jacobi*, when the Lords
 “ denied a Conference to the House of Commons upon the point
 “ of impositions *.

“ And their Lordships are to offer what other arguments they

* See the Lords Journals, 26th May, 1614.

“ think fit to offer, to assert the proceedings of this House, and to
“ destroy the assertions of the House of Commons.”

Then the House was adjourned during pleasure, and the Lords went to the Conference ; which being ended, the House was resumed.

Memorandum, That, before the putting of the question, “ Whether the Lords should give a Free Conference to the House of Commons upon the subject-matter of the last Conference,” the Earl of Bridgewater desired leave to enter his dissent, if the question was carried in the affirmative : which being granted, he accordingly entered his dissent, by subscribing his name, “ Because the Conference granted was not a bare Conference, but a Free Conference.”

“ J. Bridgewater.”

The Earl of Anglesey reported, “ That the Lords, that were appointed to manage the last Free Conference, have kept to their Lordships directions ; and did justify the proceedings of their Lordships, and made it appear to the House of Commons, that what their Lordships had done is neither destructive to the proceedings of Parliament, nor unprecedented ; wherein they took this method :

“ First, They took notice, that their Lordships desired this Conference, not in reference to the Free Conference lately desired by the Commons, but in relation to the assertion or position of the Commons in their last Conference, this morning, which their Lordships could no way allow ; for that their Lordships had proceeded with great justice and caution in this affair, and little expected that, after their Lordships had upon three solemn debates, two whereof were upon Conferences, given the same rule thrice, the House of Commons should insist further, and that in so positive a way as their last Conference imported ; whereupon their Lordships, being desirous to part with that House in that good union and fair corre-

“ spondence with which this session began, and understanding
 “ that his Majesty intended to prorogue the Parliament to-mor-
 “ row, that there might not want time, but the Commons might
 “ have opportunity of free debate, and receive satisfaction, their
 “ Lordships had thus presently appointed them a Free Confe-
 “ rence, upon their own assertion, wherein, by the freedom their
 “ Lordships shall use, the Commons will have a proof of their
 “ kindness, and desire of good intelligence.

“ Thereupon their Lordships urged, that what they had done
 “ in this cause (which the Commons called denying in effect a
 “ Free Conference) was so far from being destructive to the pro-
 “ ceedings of Parliament, that their Lordships conceived it
 “ essential to the preserving thereof; judicature in Parliament,
 “ by the Parliament Roll of the 1st of Henry the IVth, N° 79,
 “ belonging only to that House, and not to the Commons; and
 “ this by protestation of the Commons themselves. If judg-
 “ ment the principal, much more all circumstances, and the rul-
 “ ing of proceedings leading thereto; a right inherent in all
 “ courts, without which no judicature can proceed. And shall
 “ this be denied to this, the highest court? or shall it be in the
 “ power of the House of Commons to confer, as long as they
 “ please, upon circumstantial and matters of form, to the losing
 “ of the substance? If this should be allowed, it would render it
 “ impossible for the Lords to do justice, either in condemning or
 “ acquitting; but the Commons might, if they please, delay in
 “ Conferences upon forms, till the very delay, by the charge of
 “ counsel and witnesses, prove a punishment before trial, and so
 “ judicature in Parliament prove a grievance and oppression to the
 “ subject, instead of justice. If three rules, given so solemnly as
 “ aforesaid, shall not conclude, where shall debates period? Their
 “ Lordships are so far from accounting judicature, a right and pri-
 “ vilege worth the insisting on upon such terms, that they had
 “ rather see it fairly buried, than so to enjoy it, when they can
 “ neither

“ neither justly punish nor acquit persons accused ; and, after having delivered their own judgment, upon as full and free debates and consideration as they are capable of, to be further pressed, looks too like an importunity that former times have not been so unhappy as to meet with, and they little expected from this House of Commons. And their Lordships are confident, that House intended no attempt upon their Lordships judicature. Other arguments were used against the first part of the Commons assertion.

“ As to the second part of the assertion, that it was unprecedented, their Lordships evinced the contrary by the precedent of 12 *Jacobi*, produced and urged for the denial of a Conference to the House of Commons upon the point of Imposition, the darling subject of debates in that House, and whereon they might best of any thing insist to confer. Their Lordships doubted not, if they had taken time, more precedents would occur ; but one was sufficient to destroy their general assertion.

“ The Commons hereupon, videlicet, Sir Robert Atkyns, Mr. Waller, Sir Thomas Meres, and Sir Francis Goodricke, by turns, told us, ‘ It would be too great a disregard to what we had so fully offered, to make any present answer, or give their own sense to what their Lordships had delivered ; besides, they were not provided, nor instructed, to discourse this matter now, being unexpected ; and that they conceived a Conference ought regularly to have been desired by the Lords before this Free Conference, that they might have been convinced with the Lords reasons, or had some point issued to treat and confer upon.’

“ To that the Lords replied, ‘ That they were not now to dispute that ; the Commons, having agreed to a Free Conference, allowed it to be regular, and they doubted not many precedents warranted it ; but, if they had conceived otherwise, the House of Commons might have declined it.’

“ The Commons acknowledged, ‘ That they had it in debate in
 “ their House ; but finding that, if they had refused us a Free
 “ Conference, they had done the same thing they took exception
 “ at in our proceedings, they had agreed to our desire ; and, in-
 “ sisting again that they were not provided to confer upon what
 “ we had argued so largely, they desired leave to resort to their
 “ House, to acquaint the Commons with the particulars delivered
 “ by the Lords, and receive their directions ; and according to
 “ what further order they should receive, they would attend their
 “ Lordships.’

“ The Lords said, ‘ They could not but wonder to see them
 “ wave a Free Conferring upon an assertion of their own, stated
 “ at the last Conference by themselves, and being the whole
 “ matter then delivered, and that so positively, that sure it was
 “ done upon some debate and consideration. We conceived we had
 “ given them an advantage, by appointing a Free Conference imme-
 “ diately upon their own Conference ; but were so well assured of
 “ our just and warranted proceedings, that they might see we were
 “ ready to assert them by arguments, precedents, and debate. If
 “ the Commons were not now ready, the failing was not on our
 “ part, and they might use their liberty ; concluding, that we had,
 “ by this Conference, manifested our desires of closing with a
 “ fair correspondence, when we undertook a Free Conference on
 “ the sudden, upon some disadvantage.’ And so, with mutual
 “ expressions of kindness, we parted ; the Commons desiring to
 “ have the liberty to peruse the Journal of 12 *Jacobi*, wherein the
 “ precedent is that was cited by their Lordships, which we pro-
 . * mised them.”

A P P E N D I X, N° 10. (p. 252.)

Lord Rochester's Report of Precedents of Impeachments, from the Journals and Records in the Tower.

Die Martis, 2° die Julii, 1689.

Lords Journals.

THE Earl of Rochester reported what precedents the Committee have found in the Journals, relating to impeachments, and records in the Tower.

Precedents of impeachments.

“ 26° Martii, 1681. Edward Fitzharris was impeached of High Treason ; but no articles were brought up against him.

“ Fitzharris.

“ Mr. Attorney General acquainted the House of the examinations taken against him ; and that he had an order of the King's, dated the 9th of March instant, to prosecute him at law.

“ Resolved, he shall be proceeded with at common law.

“ 7° Januarii, 1680. The Earl Tyrone impeached of High Treason. No articles brought up. The Parliament prorogued two days after ; so no further proceedings.

“ Earl of Tyrone.

“ 7° Januarii, 1680. Sir William Scroggs impeached of treason and misdemeanors, and articles brought up ; one whereof was a general article of treason, for endeavouring to subvert the fundamental laws of the kingdom, without specifying any particular fact. He gives £. 10,000 bail for his appearance, and two sureties with £. 5,000 apiece. No further proceedings*.

“ Scroggs.

“ 21° Decembr. 1680. Edward Seymour, Esquire, impeached

“ Seymour.

* This is a great mistake. See before the case of Sir William Scroggs, N° 54. p. 199. and N° 3. p. 253 and 254, with the note.

“ of high crimes and misdemeanors, and the articles brought up
 “ against him. He is called in, hears the articles read, and is or-
 “ dered to put in an answer.

“ 23° Decembr. He delivered in his answer, which was read.
 “ No further proceedings.

Penn. “ 24° April, 1668. Sir William Penn impeached of several
 “ high crimes and misdemeanors. The articles delivered at a
 “ Conference, and Sir William Penn required to appear at the
 “ Bar.

Drake. “ 6° Decembr. 1660. William Drake impeached for writing a
 “ scandalous, seditious, and wicked pamphlet.

“ 11° Decembr. Ordered to be brought to the Bar.

“ 19° Decembr. The Lords declare, that if this Parliament be
 “ dissolved before that they shall have time to give judgment
 “ against the said Drake, that then the King's Attorney do
 “ proceed against him.

“ The Lords apprehending they may not have time, before
 “ their dissolution, to proceed in judicature against him, ordered,
 “ That Mr. Attorney do, in his Majesty's name, proceed against
 “ him in the King's Bench.

“ Radcliffe. “ 29° Decembr. 1640. Sir George Radcliffe impeached of
 “ treason ; but no articles brought up.

“ 31° Decembr. Articles were delivered against him, at a
 “ Conference ; one whereof was, That he had traitorously con-
 “ spired and confederated with the Earl of Strafford, to subvert
 “ the fundamental laws and government of the realms of Eng-
 “ land and Ireland, and to introduce an arbitrary and tyrannical
 “ government, against laws ; and hath been a counsellor, actor,
 “ and abettor, in that wicked and traitorous design of bringing the
 “ Irish army into England, to compel the subjects of this king-
 “ dom to submit thereunto. He was brought to the Bar, and, at
 “ his request, had counsel allowed him.

“ 12° Februarii,

" 12° Februarii, 1640. Sir Robert Berkley was impeached by
 " the Commons of treason. No articles then brought up. He
 " was committed to the Chief Sheriff of London. " Justice Berkley.

" 6° Julii, 1641. A charge was delivered, at a Conference,
 " against him ; but not entered in the Journal.

" 26° Octobr. 1641. He gives in his answer, petitions for
 " counsel, and a warrant for witnesses ; and that he may have
 " liberty, with a keeper, to go to Serjeants Inn, to peruse his
 " papers there.

" 29° April, 1643. A Message from the Commons, That
 " whereas the Commons have brought up impeachments against
 " divers of the Judges, some of High Treason, and some for high
 " crimes and misdemeanors ; the Commons desire to have a
 " speedy day appointed, wherein they may come and demand
 " judgment against the said Judges, for the judgment touching
 " ship-money only.

" Ordered, That Mr. Justice Berkley shall be tried for the
 " matters of ship-money only.

" 18° Decembr. 1641. Daniel O'Neale, accused of High Treason
 " by the Commons. No articles brought up. He was com- " O'Neale.
 " mitted to the Gatehouse.

" 26° Januar. 1641. He is removed from the Gatehouse to the
 " Tower.

" 18° Decembr. 1640. William Laud, Archbishop of Canter- " Arch.Cant.
 " bury, impeached by the Commons of High Treason. No ar-
 " ticles then brought up. He is committed to the Black Rod,
 " till he hath cleared himself of this accusation.

" 3° Martii, 1620. A message from the Commons, concerning " Mompef-
 " Sir Giles Mompeffon's being fled ; whereupon a proclamation son.
 " was issued for the apprehending him. No articles were brought
 " up against him.

“ *Rot. Parl.* 4° Ed. III. (N° 2.)

“ SEVERAL judgments for High Treason were given against
“ several Commoners by the Lords.

“ * *Rot. Parl.* 4° Ed. III. (N° 2.)

Judicium
Simonis de
Bereford.

“ ITEM, in mesme le Parlement, si chargea n're Seign. le
“ Roi, les ditz Countes, Barouns, et Peres, a doner droit et loial
“ juggement, come affiert, a Simon de Bereford, Chivaler, q'estoit
“ eidant et conseillant au dit Roger de Mortimer en totes les
“ trefons, felonies, et malveistes, pur lesqueles le avandit Roger
“ issint fust agarde et ajuge a la mort, come conue † chose et no-
“ toire est as ditz Peres a ce q' le Roi entent ; lesqueux Countes,
“ Barons, et Peres revyndrent devant n're Seign. le Roi en mesme
“ le Parlement, et disoient touz come d'une voice, qu' l'avant dit
“ Simon ne feust pas lour Pere, par qoi eux ne furent pas tenuz a
“ jugger luy come Pere de la Terre : mes pur ce q' notoire chose
“ est, et conue a touz, q' l'avant dit Simon estoit aidant et con-
“ seillant au dit Roger en totes les trefons, felonies, et malveistes
“ susditz, lesqueles choses sont en purpris de Roial Poer, murdre
“ de Seign. Lige, et destruction du Sank Real, et q'il estoit auxint
“ coupable d'autres div'ses felonies et robberies, et principall
“ meyntenour de robbeours et felouns, si agarderent et ajuggerent
“ [† les ditz] Countes, Barouns, et Peres, come Jugges du Par-
“ lement par assent du Roy en mesme le Parlement, q' le dit
“ Simon, come treitre et enemy du Roy et du Roialme, feust
“ treyne et pendu : et sur ce estoit command a mareschal a faire
“ l'execuc'on du dit juggement ; laquele execution fust fait
“ et perfourny le Lundy prochein apres la Feste de Seint Thomas
“ l'Apostle.

* *Rot. Parl.* Vol. II. p. 53.

† Origin. come.

‡ Bis in originali.

“ Tres touz les Peres, Countes, et Barouns assemblez a ceste
 “ Parlement a Westm. si on examine estraitement, et sur ce sont
 “ assentuz et acordez, q’ Johan Mautravers si est cupable de la
 “ mort Esmon Counte de Kent, le uncle n’re Seign. le Roi q’ore
 “ est, come celui q’ principalement, traieroufement, et faussement,
 “ la morte le dit Counte compassa, issint q’ la ou le dit Johan *
 “ savoit la mort le Roi Edward; ne pur quant le dit Johan, par
 “ enginouse manere et par ses fausses et mauveise sotinetes, fist le
 “ dit Counte entendre la vie le Roi, lequel faus compassement fust
 “ cause de la mort le dit Counte, de tut le mal q’ s’ensuit: par
 “ quoi les susditz Peres de la Terre et Juges du Parlement,
 “ ajuggent et agardent q’ le dit Johan soit treyne, pendu, et
 “ decolle, come treiture, queu part q’il soit trove: et prient les
 “ Peres susditz a n’re Seign. le Roi, q’il voille commander q’
 “ briefs soient faitz, de faire publier et crier par tut le Roialme,
 “ q’ qi purra prendre le dit Johan vif, et le mesne au Roi, il
 “ auera M. marcs; et si par cas ne purra estre pris vif, q’ qi porte
 “ sa test, il auera D. l. du doun le Roi.

“ Judicium
 Joh’is Mau-
 travers.
 3.

“ Estre ce, au tiel juggement est acorde, q’ soit fait de Boeges
 “ de Bayons et Johan Deveroil, par la cause susdite; et qe qi
 “ purra prendre le dit Boeges vif, et mesne au Roi, auera Cf. ou
 “ q’ porte la teste, il auera cent marcz; et q’ qi purra prendre le
 “ dit Johan vif, et mesne au Roi, auera C. marcz, et qi q’ port la
 “ teste, auera xl. l. du doun le Roi.

“ Judicium
 Bogonis de
 Bayons et
 Joh’is Deve-
 roil.

“ Item, a tieu juggement est assentuz et accorde de Thomas
 “ de Gourney et William de Ocle, pur la mort le Roi Edward
 “ Pier n’re Seign. le Roi, q’ ore est q’ fausement et traieroufe-
 “ ment lui murdrerunt; et q’ qi puisse prendre le dit Thomas
 “ vif, auera Cf. et q’ qi porte la teste C. marcz; estre ce q’ qi
 “ puisse prendre le dit William vif, auera C. marcz; et qi q’

“ Judicium
 Thome de
 Gourney &
 Will’i de
 Ocle.

• Origin. Savoil.

“ porte la teste, si par cas ne puisse estre pris vif, il auera xl s. du
 “ doun le Roi.

“ *Rot. Parl.* 4^e Ed. III. (N^o 6.)

“ Concordia
 ne trahatur
 in consequen-
 tiam.

“ ET est assentu et accorde, par n're Seign. le Roi et touz
 “ les grantz en pleyn Parlement, q' tut soit il les ditz Peres, come
 “ Juges du Parlement, empristrent en la presence n're Seign. le
 “ Roi, a faire et a rendre les ditz juggementz par assent du Roi
 “ sur aucuns de ceux q' n'estoient pas lur Peres, et ce par
 “ encheson du murdre de Seign. lige et destruction de celui q' fu
 “ si pres de Sank Roial et Fitz du Roi: q' par tant les ditz Peres
 “ q' ore sont, ou les Peres q' serront en temps avenir, ne soient mes
 “ tenuz ne chargez a rendre jugementz sur autres q' sur lour
 “ Peres, ne a ce faire; mes cient les Peres de la terre poer eins de
 “ ce pour touz jours soient dischargez et quietz; et q' les avanditz
 “ jugementz ore renduz ne soient tret en ensample n'en conse-
 “ quence en temps avenir, par quoi sez ditz Peres pussent estre
 “ chargez desore a jugger autres q' lur Peres contre la lei de la
 “ terre; si au tiel cas aveigne, q' Dieu defend.”

After the reading the copy of the abovesaid record, which was affirmed by one of the Peers to be authentic, he having examined it with the roll; and debate thereupon;

Question to
 the Judges,
 Whether this
 record is a
 statute? and

This question was asked the Judges, “ Whether the said record
 “ is a statute?”

The Judges answer, “ As it appears to them by the aforesaid
 “ copy, they believe it is a statute; but if they saw the roll itself,
 “ they could be more positive therein.”

And, after further debate,

This question was proposed to be asked the Judges;

Whether the
 Lords are
 barred from
 trying a
 Commoner
 on an im-
 peachment?

“ Whether the Lords, by this statute, be barred from trying
 “ a Commoner upon an impeachment of the House of Com-
 “ mons?”

+

Then

Then this previous question was put, "Whether that question shall be put to the Judges?"

It was resolved in the negative.

And, after further debate,

This question was put, "Whether this House will proceed upon the impeachment brought from the House of Commons against Sir Adam Blaire, Captain Henry Vaughan, Captain Frederick Mole, John Elliott, Doctor in Physic, and Robert Gray, Doctor in Physic?"

Lords will proceed upon the impeachment against Sir A. Blair, Captain Vaughan, &c. al.

It was resolved in the affirmative.

APPENDIX, N° II. (p. 259.)

Extracts from Commons Journals, of Conferences, &c. respecting convenient Accommodations being provided for the Members to be present at the Trial of John Goudet, and others.

Mercurii, 15^o die Junii, 1698.

SIR Rowland Gwyn reported from the Committee appointed to draw up what shall be offered at a Conference with the Lords, upon the subject-matter of their Lordships message, the 9th instant, relating to the trial of John Goudet and others, upon the impeachments against them, That they had drawn up the same accordingly; which he read in his place; and afterwards delivered in at the Clerk's table; where the same was twice read, and agreed unto by the House; and is as followeth; viz.

That the Commons, having a right, at trials upon impeachments, to come as a House, or by a Committee, as they shall think fit, have always had a convenient accommodation prepared for them, as in the cases of the Earl of Strafford, and the Lord Viscount Stafford: and therefore may justly expect a convenient place may be appointed for the Managers of the impeachments against John Goudet, and others; whereby they may be the better enabled to make good their charge against them.

Ordered, That Sir Rowland Gwyn do go to the Lords, and desire the said Conference.

Sir Rowland Gwyn reported, That he having been at the Lords, to desire the said Conference, they do agree to a Conference presently, in the Painted Chamber.

Ordered,

Ordered, That the same Committee do manage the said Conference.

And they went to the Conference.

And being returned ;

Sir Rowland Gwyn reported, That they had been at the Conference, and delivered to the Lords what they had in charge.

Jovis, 16^o die Junii.

A MESSAGE from the Lords, by Sir Miles Cook and Sir Robert Legard :

Mr. Speaker,

The Lords do desire a present Conference with this House, in the Painted Chamber, upon the subject-matter of the last Conference.

Resolved, That the House do agree to a present Conference, as the Lords do desire.

And the messengers were called in again, and Mr. Speaker acquainted them therewith.

Ordered, That the Committee who managed the last Conference, do manage this Conference.

And they went to the Conference.

And being returned ;

Sir Rowland Gwyn reported the Conference: that the same was managed by the Earl of Rochester ; who said, That the Lords have desired this Conference with the House of Commons, in order to continue that good correspondence, which they will always endeavour to preserve between the two Houses ; and, having given instances of their compliance upon several occasions, the sincerity of their intentions, towards that end, cannot be doubted : but if, at this time, they cannot consent to what the Commons desire, they hope, that even their disagreeing in this point

point may tend to a better correspondence for the future; their Lordships conceiving, that in all proceedings between the two Houses, those methods that have been constantly practised are the least liable to objections; and that the consenting to any one innovation, in such cases, may occasion further disputes. And whereas the Commons have instanced, that in the trials of the Earl of Strafford, and the Lord Viscount Stafford, they had a convenient place appointed for their Managers, their Lordships must observe, that both those trials were for High Treason, and in Westminster Hall: but, upon all trials for misdemeanors, which have been constantly at the Bar of their Lordships House, there is not one precedent in their books, that the House of Commons have ever, till this time, asked what they have desired upon this occasion; and therefore, their Lordships do insist on their resolution, signified to the House of Commons, by a message delivered to them on the ninth instant, in which they did acquaint them, That their Lordships having looked into Precedents, do find, that at trials upon impeachments at the Bar of the House of Lords, the Committee of the House of Commons, appointed to manage the evidence, have always come to the Bar of the House, without any other provision for them; and their Lordships intend to proceed in the same manner, as hath been usual at all trials within their House.

Resolved, That this House will, to-morrow morning, take the said report into consideration.

Veneris, 17^o die Junii.

THE House proceeded to take into consideration the report of the Conference yesterday with the Lords.

Resolved, That this House doth insist upon their having a convenient place appointed for the Managers of the impeachments
against

against John Goudet, and others; whereby they may be the better enabled to make good their charge against them.

Resolved, That a Free Conference be desired with the Lords, upon the subject-matter of the last Conference.

Ordered, That Sir Rowland Gwyn do go to the Lords, and desire the said Free Conference.

Ordered, That the Committee appointed to manage the last Conference do meet this afternoon, and prepare themselves for the said Free Conference; and that Sir Chr. Musgrave, Mr. Harcourt, Lord Conningsby, Sir Joseph Jekyll, Mr. Methwen, and Sir Robert Rich, be added to the said Committee.

Lunæ, 20^o die Junii.

RESOLVED, That this House will be present at the trial of John Goudet and others, upon the impeachments against them, as a Committee of the whole House; in regard the matter is of great consequence to the trade of the kingdom.

Sir Rowland Gwyn acquainted the House, That he had not, as yet, desired a Free Conference with the Lords upon the subject-matter of the last Conference; by reason the Lords did, upon Friday last, adjourn till this day.

Sir Rowland Gwyn reported, That he having, according to order, been at the Lords, to desire a Free Conference, upon the subject-matter of the last Conference, they do agree thereunto, to-morrow at one o'clock, in the Painted Chamber.

Martis, 21^o die Junii.

THE Managers appointed went to the Free Conference with the Lords:

And being returned;

Sir:

Sir Rowland Gwyn reported, That the Managers had attended the Free Conference, and that the same having been long, it would take some time for them to recollect the matter, so as to report the same to the House.

Ordered, That the Managers do draw up a report of the said Free Conference, and make the same with what convenient speed they can.

Jovis, 23^o die Junii.

A MESSAGE from the Lords, by Sir Miles Cook and Mr. Meredith.

Mr. Speaker,

The Lords desire a present Conference with this House, in the Painted Chamber, upon the subject-matter of the last Free Conference.

And then the messengers withdrew.

Resolved, That this House doth agree to a Conference with the Lords, as the Lords do desire.

And the messengers were called in again; and Mr. Speaker acquainted them therewith.

Ordered, That the Members who managed the Free Conference, do manage this Conference.

And they went to the Conference.

And being returned;

Sir Rowland Gwyn reported the Conference: and that the Earl of Rochester managed the same; who told them, That the Lords hoped, the Commons would take it as an instance of their sincerity, to maintain a good correspondence between the two Houses; and that the Lords having, upon the report of the last Free Conference, been acquainted, that mention had been made, by one of the Members of the House of Commons, that their House had resolved to prosecute the impeachments of John Goudet and others, by a Committee of the whole House; though at the

the same time, several other of the Members of that House declared there was no authority given for the saying any such thing at that Free Conference; however, it having been there said, the Lords have desired this present Conference, to know of the Commons, in what manner they design to prosecute the said impeachments.

Resolved, That this House will be present at the trial of John Goudet and others, upon the impeachments against them, as a Committee of the whole House.

Resolved, That the said resolution be communicated to the Lords at a Conference.

Resolved, That a Conference be desired with the Lords, upon the subject-matter of the last Conference.

Ordered, That Sir Rowland Gwyn do go to the Lords and desire the said Conference.

Sabbati, 2^o die Julii.

SIR Rowland Gwyn, according to order, reported the Free Conference with the Lords, the 21st of June last, relating to the impeachments of John Goudet and others, as followeth; viz.

That the Members of this House, who were commanded to manage the Free Conference with the Lords, on Tuesday the 21st of June last, did meet their Lordships in the Painted Chamber.

And the Conference was begun by the Managers of this House: who did acquaint the Lords, That the Commons had desired this Free Conference, in order to maintain a good correspondence with their Lordships; and could not doubt the sincerity of their Lordships intentions towards that end:

That the good and welfare of this kingdom, in great measure, depend upon it; and that it is as much their Lordships interest, as the Commons, to continue it: and therefore, the Commons

might reasonably hope, that their Lordships would wave all such resolutions as might occasion, or tend to, any difference between the two Houses :

That the matter now in question does arise from a message sent, by the Commons, to their Lordships on the 6th of this instant, desiring, that a convenient place might be appointed for the Managers of the impeachments against John Goudet and others, as is usual ; and their Lordships answer's thereunto :

That the having such a conveniency appointed, is absolutely necessary for the Commons ; whereby they may be the better enabled to make good their charge against them :

That the persons impeached are eight in number ; and the Commons have many witnesses, books, and papers to produce, to make good their charge ; which probably may continue the trials for some days :

That all trials are in open court ; and that it will be impossible for the Commons to be defended from the crowd ; or to produce their evidence, and make use of it in such manner, and method, as would be necessary ; or bear the fatigue of the trials ; if they had not convenient accommodation provided for them :

That the Commons are a part of the legislature ; and, if they must be set upon a level with the meanest of the people, it would be a diminution to their Lordships honour, who are another part of it, to treat them with disrespect :

That the legislature consists of three parts, King, Lords, and Commons ; and they are mutually concerned to support each other's honour and dignity ; and whatever slight or disrespect is shewed to any one of them, ought to be resented by the other two :

That all courts of justice do provide convenient accommodation for the prosecutors, in all trials whatsoever ; and the Lords, in the trial of the Lord Mohun, did appoint a convenient place for the King's Counsel ; wherefore the Commons cannot believe,
that

That their Lordships will have more regard to particular Gentlemen of the long robe, than a Committee of the House of Commons :

That the Commons ought, of right, to have a convenient place appointed for their Managers, in all trials upon impeachments; and such provision was made for them in the trials of the Earl of Strafford, and Lord Viscount Stafford :

That the Lords did propose to the Commons, That a convenient place for their Managers should be provided, in the House their Lordships now sit, upon the trial of the Earl of Strafford :

That the distinction made by their Lordships, at the last Conference, between trials for treason, and trials for misdemeanors, cannot avail in the present case; for that the nature of the crime can only relate to the punishment due for the same; and does not alter, or change, the nature of the Court :

That the House of Lords are, to all intents, the same Court in Westminster Hall, as in any other room, or place; and have the same jurisdiction; the room where the Lords now sit is not essentially necessary to the Constitution; the Lords were a Court before that room was built; and the same deference is paid to the House of Lords in one place, as another; and, if there be reason for a conveniency in one place, the same reason holds for another: the Commons have shewed precedents; and though the precedents do not fully come up to the point in question, yet they are precedents for any thing within the same reason :

That the Commons may, of right, appear at trials upon impeachments, as a House, or by a Committee of the whole House, as they think fit, and that, in regard this is a matter of great consequence to the trade of this kingdom, they do intend to appear by a Committee of the whole House upon this trial :

That the message of the Commons, desiring a convenient place might be appointed for the Managers, "as usual," doth imply, That such conveniency hath been often provided, as appears by

the precedents quoted; though, perhaps, not always: and therefore, the Commons conceive, That the precedent of the Lord Mordaunt, upon the Journals, is not sufficient to bar them of that conveniency:

That all trials for misdemeanors have not been at the Bar of the House of Lords:

That the charge, and the substance of the evidence against Sir Giles Mompesson, and the other persons concerned with him, was delivered by the Commons, at a Conference; and the Lords appointed Committees, to examine the witnesses, to make good that charge; the examinations were reported to the House, and copies sent to the parties accused; and, upon their giving in their answers, the Lords proceeded to judgment; without any trial at the Bar:

That the like was done in the cases of the Earl of Middlesex, who was Lord Treasurer of England; and the Lord Viscount St. Albans, who was Lord Chancellor:

That if misdemeanors can be tried, only, at the Bar of the House where their Lordships now sit, and that House should happen to be burnt, or the Parliament should be summoned to meet at any other place; then no person could be tried, upon any impeachment for misdemeanor:

That 'tis not proper for the Commons to appoint the place where the trial should be; but, wherever it is appointed, they judge it reasonable and fitting, that those Members of the House of Commons, who have the management of that trial, and act not for their private profit, but the public good, should have better accommodation than those that appear for their fees:

That the matter of proof, in case of misdemeanor, may be as long as in the case of treason; and the reasons for conveniency and accommodation for the Managers, are as strong in the one case, as the other:

That

That the methods of justice are not things of ceremony, but things of right ; or they are not at all to be insisted upon :

That the Commons are not in their own power, as Counsel at the Bar, having a greater trust upon them ; and, there being eight persons to be tried, it may be impossible for the strength of nature to endure it, without an accommodation suitable to the occasion :

That the Commons do not think it will be any diminution to the jurisdiction of the House of Lords, to appoint a convenient place for the Commons to manage their evidence : the higher the Court is, there is more reason that trials, in that Court, should be managed with the greatest decency, and least disturbance :

That if there be no precedent, that this conveniency was ever asked, there can be none that it ever was denied : it is a circumstance of action, to be regulated by the variety of accidents ; and it is time enough for the Commons to ask a remedy for an inconvenience, as soon as they either apprehend or feel it :

That, for these reasons, the Commons do insist upon their having a convenient place appointed for the Managers of the impeachments against John Goudet, and others ; whereby they may be the better enabled to make good their charge against them.

The Managers for the Lords, who spoke at this Conference, were, the Earls of Rochester and Peterborough, and the Lord Godolphin : and the substance of what was said by the Managers for the Lords, was ;

That the Lords meet the Commons with as great a desire of maintaining a good correspondence between both Houses, as the Commons can have ; and that they hope the Commons will not doubt of their sincerity :

That the Commons cannot think, That the denying them a convenient accommodation, looks like a disrespect ; because they
are

are defended from it by the Constitution ; and by their persons, as well as their characters :

That the point in question is grounded upon the first message ; which was, to desire a convenient place for the Managers, “ as was usual ;” and the Commons have insisted a great deal more upon the reasonableness of the thing, and the conveniency of it, than its being usual ; and if a message had been sent, in the terms that the Commons seem to argue upon, possibly there would not have been that difference of opinion, as hitherto :

That the crimes the Commons have accused the persons of, cannot be more odious to the Commons, than they are to the Lords ; and the Lords are as ready to judge upon them, as the Commons are to prosecute :

That if there happens to be any difference, or impediment, it will arise from the Commons desiring something that is not usual, and insisting upon it as usual ; and the hindrance of this prosecution will lie at their doors, that insist upon a thing as usual, when 'tis not proved to be so :

That this thing has not been usual, in the manner the Commons have asked it, does appear, by the several precedents in the cases of the Attorney General, who was impeached by the Commons in the year 1641 ; Bynion, and Gourney Lord Mayor of London, who were impeached in 1642 : and Archbishop Laud, impeached in 1643 :

That there is no mention, in the Lords Journals, of any such message sent, nor of any provision made for the Commons, upon these trials :

That several Lords and Commons do well remember, That divers Members of the House of Commons came to the Bar of the Lords House, to manage the evidence against the Lord Viscount Mordaunt, who was impeached in the year 1666 ; and that no such message was sent, nor any provision made for them :

That if any such message had been sent by the Commons, upon these impeachments, or provision made for them, it were almost impossible but it would have been entered in the Lords Journals :

That the Lords own, that the crime being misdemeanor, or treason, does not alter the case ; the crime rather concerns the person that is accused, than the prosecutors, or judges :

That the message sent by the Commons, in the Earl of Strafford's case, was to desire their Lordships would take care to find a conveniency for both Houses ; which does seem to imply, That the Commons did, from the beginning, think, that the trial would be in some other place than the House of Lords :

That the Lords do not find, by their precedents, that it hath been usual : if it had been asked as a conveniency, at first, possibly, it might have been otherwise than it is ; and the Commons, intending to come as a Committee of the whole House, may alter the case :

That the reasonableness of what is desired by the Commons, was never considered by the Lords ; for they were bound up to consider nothing but what was usual :

That matters of form are essential to government ; and 'tis of consequence to be in the right :

That all the reason for forms, is custom ; and the law of forms, is practice ; and reason is quite out of doors : some particular customs may not be grounded upon reason, and no good account can be given of them ; and, yet, many nations are zealous for them ; and Englishmen are as zealous as any others, to pursue their old forms and methods :

That when the Commons appoint a Committee, to manage in the case of misdemeanor, there is but a small number ; which does not require the room that is necessary for a Committee of the whole House ; but, in matters of treason, every man is willing to hear, and the whole House of Commons ought to hear, that they may the better know how to give their votes : so there is a mani-

fest.

fest distinction between the whole House, and a Committee, however considerable; the whole House is more so than any part; and those that are sent, must be inferior to the whole body that sends them:

That the words "as usual," being in the Commons message, the Lords could look upon nothing but what was usual, though never so just and reasonable in itself; and the Commons have not proved it usual, by precedents exactly squaring to this case: the precedents produced by the Lords shew, That nothing in this kind was ever done in like cases:

That if the Commons message had been grounded upon the conveniency and reason of the thing, the Lords would have been compliant:

That the trial of the Lord Mordaunt, in 1666, proceeded so far, as to decide this point in question:

That if the Commons come, in a Committee of the whole House, there may be a door for an accommodation; which comes up to the precedent of the Earl of Strafford: for there ought to be another sort of accommodation provided, when the whole House comes, than for a Committee to manage the evidence:

That, supposing the Commons had reason on their side, this is a mixed case; and nothing ought to be imputed to the House of Lords: that they endeavour to put it upon this foot, that the House may have reason and custom to proceed on, by taking notice of what was said by the Commons, That they intend to come in a Committee of the whole House:

That though the Lords should allow the reason of the thing, yet reason is proper to be urged, only to prove a thing reasonable: but when, from reason, you would urge it as a precedent, which you do not prove, but by reason, you may prove it a reasonable thing, but you cannot prove it a precedented thing.

The Managers for the Commons, by way of reply, said ;

That if the Commons were allowed, of right, to have a conveniency provided for them in the cases of the Earl of Strafford, and Viscount Stafford, at their trials in Westminster Hall ;—though their Lordships call it Westminster Hall, yet the Commons call it the House of Lords ; and their Lordships cannot call it otherwise ; for their Lordships must act as such, or they cannot pass judgment ;—the House does not constitute the Lords, but the Lords the House :—so that, it having been allowed in those cases, the Commons think they may demand it, “ as usual : ”

That, if no precedent could be produced, it is so reasonable, and necessary, that their Lordships cannot, in justice, deny the Commons having such a conveniency : that necessity makes precedents ; and that in this case, there are not only precedents, but necessity too :

That the word “ usual ” ought to be understood as it is in all cases, where a prosecutor is accommodated with such conveniencies as may enable him to carry on the prosecution with effect :

That the precedents mentioned by their Lordships do not make for them ; because the Journals are silent as to what provision was made for the Commons, in those cases :

That if no particular provision was made for the Commons in the case of the Lord Mordaunt ; yet, if that case had been attended with such circumstances as would have made that trial to have been as difficult to be carried on as this present prosecution, it is not to be doubted, but their Lordships would have made some provision for it :

That the Commons speak very feelingly ; for they are incommoded to that degree, in half an hour’s time, at this Conference, that it is a very sensible argument of the necessity, that some conveniency should be provided for them at the trials :

That the Commons have tried other methods, without success :

and, if this prosecution drops, it is to be feared, there will be a total failure of justice in Parliament :

That if the Commons have departed from their first message, by insisting upon the reasonableness of having such a conveniency provided for them, their Lordships seem to allow the reasons to be good, by not giving any answer to them :

And, if the Commons have gone upon that point, instead of the usage, it may give another understanding of the matter ; for, if reason be on the Commons side, it is not to be questioned, but it will have a good effect with the Lords :

That it would be a lessening to the Lords, to suppose them greater in one place than another ; they have the same honour wherever they are ; and the Commons will pay all the respect that hath been paid to the Lords ; and hope the Lords will afford the same conveniency to the Commons, that hath been heretofore provided upon impeachments :

That if the Commons should allow, That they have not the same right to a conveniency in the House of Lords, which they claim in Westminster Hall, and a like dispute should happen upon an impeachment to be tried in Westminster Hall, the Commons apprehend, that their Lordships might deny them such conveniency, by affirming, That they are the same Lords in Westminster Hall, as in the House wherein they now sit ; and therefore ought not to be allowed any other conveniency in Westminster Hall, than in the House of Lords :

That all Courts provide convenient accommodations for the prisoner and prosecutor : it is a part of universal justice : and therefore it is to be presumed, that the Lords, who are so high and honourable a Court, will not deny it :

That the Lords and Commons sat together in the Court of Requests, then called Camera Alba, in the case of Gomenis and Weston *.

* See this case in the note, to p. 68, of this Volume.

A P P E N D I X, N° 12. (p. 263.)

Extracts from the Commons Journals, respecting the Impeachment of Lord Orford, Lord Somers, &c.

Mercurii, 21^o die Maii, 1701.

A Message from the Lords, by Sir Robert Legard and Mr. Gery :

Mr. Speaker,

They are commanded by the Lords to acquaint this House, That their Lordships having been desired, by the Earl of Orford, that a day may be appointed for his speedy trial, their Lordships, finding no issue joined by replication of this House, think fit to give notice thereof to this House——Also,

They are commanded, by the Lords, to acquaint this House, That they, having, on the first day of April last, sent up to their Lordships an impeachment against William Earl of Portland, for high crimes and misdemeanors; and having also, on the 15th day of the same month, impeached Charles Lord Hallifax for high crimes and misdemeanors; and there being as yet no particular articles exhibited against the said Lords; their Lordships think themselves obliged to put this House in mind thereof; which, after impeachments have so long depended, is a hardship to the persons concerned, and not agreeable to the usual methods and proceedings in Parliament in such cases.

And then the messengers withdrew.

Resolved, That this House will send an answer to the said messages, relating to the said impeachments, by messengers of their own.—And the messengers were called in and Mr. Speaker acquainted them therewith.

Veneris, 23^o die Maii.

SIR Bartholomew Shower reported from the Committee appointed to draw up the articles of impeachment, That they had considered of the answer of Edward Earl of Orford, and had drawn up a replication thereunto; which they had directed him to report to the House; which he read in his place; and afterwards delivered in at the Clerk's table: where the same was twice read; and, with an amendment, agreed unto by the House; and is as followeth; viz.

The Commons have considered the answer of Edward Earl of Orford to the articles of impeachment exhibited against him by the Knights, Citizens, and Burgesses assembled in Parliament; and do aver their charge of high crimes and misdemeanors against him to be true; and that the said Earl is guilty in such manner as he stands accused and impeached; and that the Commons will be ready to prove their charge against him, at such convenient time as shall be appointed for that purpose.

Ordered, That the said replication be ingrossed.

Sir Bartholomew Shower also reported from the said Committee, That they had directed him to move, That they may have power to send for persons, papers, and records, that shall be thought necessary to be used at the trial of the said Earl; and to proceed in the most speedy and secret way they can, for the advantage of the prosecution.

Ordered, That the said Committee have power to send for persons, papers, and records, that shall be thought necessary to be used at the trial of the said Earl; and to proceed in the most speedy and secret way they can, for the advantage of the prosecution.

Ordered, That the said Committee have power to send some of their number, to examine Mr. Samuel Shepherd in the Tower.

Ordered,

Ordered, That the said Committee do consider of the messages from the Lords, relating to the impeachments, and inspect the Precedents of Messages in relation to former impeachments; and to report the same to the House.

Sabbati, 31^o die Maii.

MR. Bromley reported from the Committee, to whom it was referred to draw up the articles of impeachment, and who were to consider of the messages from the Lords, relating to the former impeachments, and inspect the Precedents of Messages in relation to former impeachments, and report the same to the House, That they had considered the said messages, and inspected the precedents: and that they had drawn up an answer to the message from the Lords, the twenty-first instant, and had directed him to report the same to the House: which he read in his place; and afterwards delivered in at the Clerk's table; where the same was read; and is as followeth; viz.

In answer to your Lordships message of the twenty-first instant, the Commons have prepared a replication to the Earl of Orford's answer to the articles of impeachment of high crimes and misdemeanors, exhibited against him, and, at present, defer bringing it up to your Lordships, because, in the trial of the several impeachments now depending, the Commons think it most proper, from the nature of the evidence that will be given at the said trials, to begin with the trial of the impeachment of John Lord Somers, of high crimes and misdemeanors.

And, as to your Lordships other message, the Commons take it to be without precedent, and unparliamentary; they, as prosecutors, having a liberty to exhibit their articles of impeachment in due time, of which they, who are to prepare them, are the proper judges: and therefore, for your Lordships to assert, that
having

having not yet exhibited particular articles against William Earl of Portland, and Charles Lord Hallifax, is a hardship to them, and not agreeable to the usual methods and proceedings in Parliament in such cases, does, as they conceive, tend to the breach of that good correspondence betwixt the two Houses, which ought to be mutually preserved.

Resolved, That the House doth agree, that the said answer be returned to the Lords, to their Lordships said message.

Ordered, That Mr. Bromley do carry the said answer to the Lords.

A Message from the Lords, by Sir John Hoskins and Sir Robert Legard :

That the Lords have commanded them to acquaint this House, That their Lordships have appointed Monday, the ninth day of June next, for the trial of Edward Earl of Orford, upon the articles brought against him by this House, in Westminster Hall : and that this House may reply, if they think fit.—
Also,

That the Lords have commanded them to acquaint this House, That this House having, on the first day of April last, sent up to their Lordships an impeachment against William Earl of Portland, for high crimes and misdemeanors ; and having also, on the fifteenth day of the same month, impeached Charles Lord Hallifax for high crimes and misdemeanors ; and there being, as yet, no particular articles exhibited against the said Lords ; their Lordships think themselves obliged to put this House in mind thereof ; which, after impeachments have so long depended, is a hardship to the persons concerned, and not agreeable to the usual methods of Parliament in such cases.

And then the messengers withdrew.

Resolved, That an answer be returned to the said message, relating to the appointing a time for the trial of the Earl of Orford ;

and to the articles of impeachment against the Earl of Portland, and Lord Hallifax; That this House will return an answer by messengers of their own.

And the messengers were called in again; and Mr. Speaker acquainted them therewith.

Resolved, That a Committee be appointed to consider of the said messages; and to search precedents in relation thereunto; and to draw up an answer to be returned to the Lords.

And it is referred to the Lord Marquis of Hartington, Sir Christopher Musgrave &c. &c. &c.; and they are to meet at five o'clock this afternoon, in the Speaker's Chamber: and are to sit *de die in diem*.

Mercurii, 4^o die Junii.

A MESSAGE from the Lords, by Sir Richard Holford and Mr. Pitt:

Mr. Speaker,

The Lords do think fit, upon occasion of the message from this House, of the one-and-thirtieth of May, to acquaint this House, That having been desired by the Lord Somers, that a day may be appointed for his speedy trial; and their Lordships, finding no issue joined by replication of the House of Commons, judge it proper to give them notice thereof, that the Commons may reply, if they think fit: and at the same time their Lordships let the Commons know, that they will proceed to the trial of any of the impeached Lords, whom the Commons should be first ready to begin with, so as there may be no occasion taken from thence for any unreasonable delay in the prosecution of any of them: and further to acquaint them, that, having searched their own journals, they do not find, that, after a general impeachment, there has ever been so long a delay of bringing up the particular articles

articles of impeachment, fitting the Parliament; and therefore the Lords do think they had reason to assert, that it was a hardship to the two Lords concerned, especially after their Lordships had put the House of Commons in mind of exhibiting such articles) and not agreeable to the usual proceedings in Parliament: and, as the Lords do not controvert what right the Commons may have of impeaching, in general terms, if they please; so the Lords, in whom the judicature does intirely reside, think themselves obliged to assert, that the right of limiting a convenient time for bringing the particular charge before them, for the avoiding delay in justice, is lodged in them.

The Lords hope the Commons, on their part, will be as careful not to do any thing that may tend to the interruption of the good correspondence between the two Houses, as the Lords shall ever be on their part: and the best way to preserve that, is, for neither of the two Houses to exceed those limits, which the law and custom of Parliament have already established.

Mr. Harcourt, according to order, reported from the Committee, who were appointed to consider of the message from the Lords, of Saturday last, and search precedents in relation thereunto, and prepare an answer to the said message, That they had considered the said message, and searched precedents, and had drawn up an answer accordingly; which they had directed him to report to the House; which he read in his place; and afterwards delivered in at the Clerk's table: where the same was once read; and then a second time, paragraph by paragraph; and, with some amendments, agreed unto by the House; and is as followeth; viz.

The Commons, on consideration of your Lordships message to them, of the 31st of May, concerning the Earl of Orford, think it their undoubted right, when several persons stand impeached
before

before your Lordships, to bring to trial such of them, in the first place, as the Commons apprehend, from the nature of the evidence, ought to be first proceeded against; to the intent all such offenders may, in due time, be brought to justice; and that no day ought to be appointed by your Lordships, for the trial of any impeachment by the Commons, without some previous signification to your Lordships from the Commons, of their being ready to proceed thereon.

The Commons could not receive this message from your Lordships, without the greatest surprize; your Lordships proceedings, in this case, being neither warranted by precedents, nor, as the Commons conceive, consistent with the methods of justice or with reason: wherefore the Commons cannot agreed to the day appointed by your Lordships for the trial of the Earl of Orford.

As to your Lordships message at the same time, relating to the Earl of Portland, and Charles Lord Hallifax, the Commons take the same to be without precedent, and unparliamentary; and conceive your Lordships frequent repetition thereof, in so short a time after the Commons had transmitted to your Lordships their articles against two of the impeached Lords, and were daily preparing their articles against the others, manifestly tends to the delay of justice, in obstructing the trials of the impeached Lords, by introducing disputes, in breach of that good correspondence between the two Houses, which ought inviolably to be preserved.

Ordered, That Mr. Harcourt do carry the said answer to the Lords.

Jovis, 5^o die Junii.

THE House, according to order, proceeded to take into consideration the message yesterday from the Lords, relating to the impeachments :

And the same being read;

Resolved, That a Conference be desired with the Lords, upon the subject-matter of the said message.

Ordered, That the said message be referred to the Committee appointed to draw up the articles ~~of~~ impeachments : and that they do draw up what is to be offered to the Lords at the said Conference.

Veneris, 6^o die Junii.

MR. Harcourt reported from the Committee appointed to draw up articles of impeachment ; and who were to consider of the message from the Lords of the fourth of June instant ; and to draw up what shall be offered at a Conference with the Lords, upon the subject-matter of the said message ; That they had drawn up the same accordingly ; and had directed him to report the same to the House ; which he read in his place ; and afterwards delivered in at the Clerk's table : where the same was read twice ; and, upon the question put thereupon, agreed unto by the House ; and is as followeth ; viz.

The Commons have desired this Conference, upon your Lordships message of the fourth of June, in order to preserve a good correspondence with your Lordships, which will always be the endeavour of the Commons, and is at this time particularly necessary, in order to bring the impeached Lords to a speedy trial. And because the messages, which your Lordships have thought
fit

fit to send to the Commons, and the answers thereunto, seem not to tend towards expediting the trials, which the Commons so much desire, but may rather furnish matter of dispute between the two Houses; the Commons therefore choose to follow the methods formerly used, with good success, upon the like occasion: and, for the more speedy and easy adjusting and preventing any differences, which have already happened, or may arise, previous to, or upon, these trials, the Commons do propose to your Lordships, That a Committee of both Houses be nominated, to consider of the most proper ways and methods of proceeding on impeachments, according to the usage of Parliament.

Ordered, That Mr. St. John do go to the Lords, and desire the said Conference.

Mr. St. John reported, That he having, according to order, been at the Lords, to desire a Conference, the Lords do agree to a Conference accordingly; and appoint the same presently, in the Painted Chamber.

Ordered, That the Committee, who were appointed to draw up articles of impeachment, do manage the Conference.

And the Managers went to the Conference.

And being returned;

Mr. Harcourt reported, That they had been at the Conference; and delivered to the Lords what the House had directed: and that the impeached Lords were not at the Conference.

Lunæ, 9^o die Junii.

A MESSAGE from the Lords, by Sir Richard Holford and Mr. Gery:

Mr. Speaker,

We are commanded by the Lords, to acquaint this House,

That, in answer to the message of the House of Commons, of the fourth instant, the Lords say, by their message sent on the third, (wherein they declare themselves ready to proceed to the trial of any of the impeached Lords, whom the Commons should be first ready to begin with) they have given a full proof of their willingness to comply with the Commons, in any thing which may appear reasonable, in order to the speedy determining of the impeachments now depending : and therefore, as the Lords conceive the Commons had no occasion to begin any dispute on that head, so their Lordships are careful to decline entering into a controversy, which seems to them to be of no use at present.

The Lords think themselves obliged to assert their undoubted right to appoint a day for the trial of any impeachment depending before them, if they see good cause for it, without any previous signification from the Commons of their being ready to proceed ; which right is warranted by many precedents, as well as consonant to justice and reason ; and their Lordships, according to the example of their ancestors, will always use that right with a regard to the equal and impartial administration of justice, and with a due care to prevent unreasonable delays.

This being the case, the Lords cannot but wonder, that the Commons, without any foundation for it, should make use of expressions, which, as their Lordships conceive, have never been used before by one House of Parliament to another ; and which, if the like were returned, must necessarily destroy all good correspondence between the two Houses.

The last part of the Commons message being, in effect, a repetition only of their former, of the one-and-thirtieth of May, to which the Lords have already returned a full answer, their Lordships think it not requisite to say more, than that they cannot apprehend with what colour their calling upon the House of Commons to send up articles against two Lords, whom the Commons have so long since impeached in general terms, can be said to

tend to the delay of justice : and therefore, as the Lords think the Commons ought to have forborn that reflection, so their Lordships, in saying no more upon the occasion of this message of the Commons, think they have given a convincing proof of their moderation, and of their sincere desire of preserving a good correspondence between the two Houses ; which is so necessary for the public security, as well as doing right upon the impeachments.

And then the messengers withdrew.

Ordered, That the said message, relating to the impeachments, be referred to the Committee, who were appointed to draw up articles of impeachment, and search precedents, to draw up an answer thereunto.

A message from the Lords, by Sir Richard Holford and Mr. Gery :

Mr. Speaker,

We are commanded by the Lords to acquaint this House, That the Lords have appointed the trial of John Lord Somers on Friday next, on the impeachment against him by this House.

And then the messengers withdrew.

Ordered, That the said message be taken into consideration to-morrow morning.

Martis, 10^e die Junii.

MR. Harcourt reported from the Committee, to whom it was referred to draw up articles of impeachment, That they had, according to order, drawn up an answer to the message from the Lords yesterday, which they had directed him to report to the House ; which he read in his place ; and afterwards delivered in at the Clerk's table : where the same was twice read ; and, with

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an amendment, agreed unto by the House; and is as followeth; viz.

The Commons, in hopes of avoiding all interruptions and delays in proceeding against the impeached Lords, and the many inconveniencies which might arise thereby, having proposed to your Lordships, at a Conference, That a Committee of both Houses might be nominated, to consider of the most proper ways and methods of proceeding on impeachments, think they might justly have expected your Lordships compliance with their said proposition, instead of your Lordships answer to their message of the fourth instant, which they yesterday received: in which answer of your Lordships, though many matters of great exception are contained, a suitable reply whereunto would inevitably destroy all good correspondence between the two Houses, yet the Commons, from an earnest desire to preserve the same, as well as to give the most convincing proof of their moderation, and to shew their readiness to bring the impeached Lords to speedy justice, at present insist only on their proposition for a Committee of both Houses, to settle and adjust the necessary preliminaries to the trials; particularly, whether the impeached Lords shall appear, on their trials, at your Lordships Bar, as criminals; whether, being under accusations of the same crimes, they are to sit as Judges on each other's trials, for those crimes; or can vote in their own cases: as we find by your Lordships Journals, since their being impeached, they have been admitted to do: which matters, and some others, being necessary to be adjusted, the Commons cannot but insist on a Committee of both Houses to be appointed for that purpose; their departing from which would be giving up the rights of the Commons of England, known by unquestionable precedents, and the usage of Parliament; and making all impeachments, the greatest bulwark of the laws and liberties of England, impracticable for the future.

Ordered, That Mr. Harcourt do carry the said answer to the Lords.

The House, according to order, proceeded to take into consideration the message from the Lords yesterday; whereby they acquainted this House, That they have appointed the trial of John Lord Somers on Friday next, on the impeachment against him.

And the same was read.

Ordered, That the said message be referred to the Committee appointed to draw up articles of impeachment, to prepare an answer to the said message.

A message from the Lords, by Sir Richard Holford and Mr. Gery :

Mr. Speaker,

The Lords do desire a present Conference with this House, in the Painted Chamber, upon the subject-matter of the last Conference.

And then the messengers withdrew.

Resolved, That the House doth agree to a present Conference with the Lords, as their Lordships do desire.

And the messengers were called in again; and Mr. Speaker acquainted them therewith.

Ordered, That the Committee that managed the last Conference, do manage this Conference.

And the Managers went to the Conference.

And, being returned;

Mr. Harcourt reported, That he had, according to order, carried the said answer to the Lords.

Mr. Harcourt also reported the Conference: and that it was managed by the Duke of Devonshire; who acquainted them, That the Lords have desired this Conference, upon occasion of the last Conference,

Conference, in order to preserve a good correspondence with the House of Commons ; which they shall always endeavour.

As to the late messages between the two Houses, their Lordships are well assured, that, on their part, nothing has passed, but what was agreeable to the methods of Parliament, and proper to preserve that good understanding between both Houses, which is necessary for the carrying on of the public business.

As to the proposal of the Commons, That a Committee of both Houses should be appointed, to consider of ways and methods of proceedings on impeachments ; their Lordships cannot agree to it.

1st, Because they do not find, that ever such a Committee was appointed on occasion of impeachments for misdemeanors : and their Lordships think themselves obliged to be extremely cautious in admitting any thing new in matters relating to judicature.

2^{dly}, That although a Committee of this nature was agreed to upon the impeachments of the Earl of Danby, and the five Popish Lords, for high treason ; yet it was upon occasion of several considerable questions and difficulties, which did then arise : and their Lordships do not find, that the success in that instance was such as should encourage the pursuing the same methods again, though in the like case ; the Lords observing, that, after much time spent at that Committee, the disputes were so far from being there adjusted, that they occasioned the abrupt conclusion of a session of Parliament.

3^{dly}, Their Lordships are of opinion, that the methods of proceedings on impeachments for misdemeanors are so well settled by the usage of Parliaments, that they do not foresee any difficulties likely to happen ; at least, none have been yet stated to them ; and all the preliminaries, in the case of Stephen Goudett, and others, which was the last instance of impeachments for misdemeanors,

misdemeanors, were easily settled and agreed to, without any such Committee.

4thly, The Lords cannot but observe, That this proposal of the Commons comes so very late, that their Lordships can expect no other fruit of such a Committee, but the preventing of the trials during this session.

The Lords assure the Commons, that, in case any difficulties shall arise in the progress of these trials, which their Lordships do not foresee, they will be ready to comply with the Commons in removing them, as far as justice, and the usage of Parliament, will admit.

Ordered, That the said report be taken into consideration to-morrow morning.

Mercurii, 11^o die Junii.

MR. Harcourt reported, from the Committee appointed to draw up articles of impeachment, That they had, according to order, drawn up an answer to the message from the Lords, on Monday last, for appointing the trial of the Lord Somers upon Friday next; which they had directed him to report to the House; which he read in his place; and afterwards delivered in at the Clerk's table: where the same was twice read; and, upon the question put thereupon, agreed unto by the House; and is as followeth; viz.

The Commons, on Monday last, received a message from your Lordships, That your Lordships had appointed the trial of John Lord Somers upon Friday next, on their impeachment against him; in which they observe, your Lordships have not nominated any place for his trial, though your Lordships thought fit to make that matter, on the last impeachments for misdemeanors, the subject of a long debate.

And they cannot but take notice, that your Lordships have

taken as long a time to give your answer to the Commons desire of a Committee of both Houses, delivered at a Conference on Friday last, as you are pleased to allow the Commons to have of the day appointed by your Lordships for the said trial.

Your Lordships appointing so short a day, especially whilst the proposition made to your Lordships, for a Committee of both Houses, was undetermined, the Commons take to be such a hardship to them, and such an indulgence to the person accused, as is not to be paralleled in any parliamentary proceeding.

The Commons must likewise acquaint your Lordships, That their experience of the interruption of a former trial, on an impeachment for misdemeanors, for want of settling the preliminaries between the two Houses, obliges them to insist on a Committee of both Houses, for preventing the like interruption.

And they conceive it would be very preposterous for them to enter upon the trial of any of those Lords, till your Lordships discover some inclination to make the proceeding thereupon practicable: and therefore they think they have reason to insist upon another day to be appointed for the trial of the Lord Somers: and the Committee doubts not but to satisfy your Lordships, at a Free Conference, of the necessity of having a Committee of both Houses, before they can proceed upon the said trial.

Ordered, That Mr. Harcourt do carry the said answer to the Lords.

Ordered, That Colonel Granville do go to the Lords, and desire the Free Conference.

Mr. Harcourt reported, That he had, according to order, delivered the answer to the Lords message.

Jovis, 12° die Junii.

COLONEL Granville reported, That he having, according to order, been at the Lords, to desire a Free Conference with their Lordships, upon the subject-matter of the last Conference ; the Lords answered, That they will send an answer by messengers of their own.

A message from the Lords, by Doctor Newton and Mr. Gery :
Mr. Speaker,

We are commanded by the Lords to acquaint this House, That, in answer to the message from the House of Commons, of the 10th instant, the Lords say, That, although they take it to be unparliamentary in many particulars, yet, to shew their real desire of avoiding disputes, and removing all pretence of delaying the trials of the impeached Lords, they will only take notice of that part of their message, wherein the Commons propose some things as difficulties, in respect of the trials ; which matters relating wholly to their judicature, and to their rights and privileges as Peers, they think fit to acquaint the Commons with the following resolutions of the House of Lords :

1st. That no Lord of Parliament, impeached of high crimes and misdemeanors, and coming to his trial, shall, upon his trial, be without the Bar.

2dly. That no Lord of Parliament, impeached of high crimes and misdemeanors, can be precluded from voting on any occasion, except in his own trial.

Their Lordships further take notice of a mistake, in point of fact, alleged in the message of the Commons ; it no way appearing, upon their Journals, that the Lords impeached have voted in their own case.

The Lords being well assured, that all the steps that have been taken by them, in relation to these impeachments, are warranted

by the practice of their ancestors, and the usage of Parliament, have reason to expect the trials should proceed without delay.

—Also,

We are commanded by the Lords to acquaint this House, That,

In answer to the message of the House of Commons yesterday, the Lords say, That they cannot give a greater evidence of their sincere and hearty desires of avoiding all differences with the House of Commons, and of proceeding on the trials of the impeachments, than by not taking notice of the several just exceptions to which that message is liable, both as to the matter and expressions.

The Lords have nothing further from their thoughts, than the going about to do any thing which might have the least appearance of hardship, with relation to the Commons :

But the answer of the Lord Somers to the articles exhibited against him, having been sent down to the Commons on the four-and-twentieth of May last; and they having, by their message of the one-and-thirtieth of May, signified to their Lordships their intention of beginning with ~~the~~ trial of his impeachment in the first place;

The Lords, considering how far the session is advanced, thought it reasonable to appoint the 13th instant for the said trial; their Lordships finding several precedents of appointing trials in impeachments within a shorter time.

The Lords also think it incumbent upon them to endeavour to dispatch the trials of all the impeached Lords before the rising of the Parliament: this is what justice requires, and cannot be looked upon as a matter of indulgence: nevertheless, that the Commons may see how desirous their Lordships are to comply with them in any thing which may be consistent with justice, they have appointed the trial of impeachment against John Lord Somers, on Tuesday, the 17th of this instant June, at ten of the clock

clock in the forenoon, in the House of Lords, which will be then sitting in Westminster Hall.—Also,

We are commanded by the Lords to acquaint this House, That the Lords do agree to a Free Conference with the Commons, as desired, and do appoint to-morrow, at one o'clock, in the Painted Chamber.

And then the Messengers withdrew.

Ordered, That the said two first messages be referred to the Committee, who were appointed to draw up the articles of impeachment.

Veneris, 13^o die Junii.

MR. St. John reported from the Committee, to whom it was referred to draw up the articles of impeachment, and to whom the messages from the Lords yesterday were referred, That they had drawn up an answer to the said messages; which they had directed him to report to the House; which he read in his place; and afterwards delivered in at the Clerk's table: where the same was twice read; and, upon the question put thereupon, agreed unto by the House; and is as followeth; viz.

The House of Commons find greater reason to insist upon their proposal of a Committee of both Houses, from the two messages received yesterday from your Lordships; for their ambiguity and uncertainty do shew the method of former Parliaments to be the most proper way for dispatch of business.

The Commons have been obliged to employ that time in considering and answering your Lordships messages, which otherwise would have been spent in preparing for the Lord Somers's trial; so that the delay must be charged where the occasion ariseth: and the Commons, having desired a Committee of both Houses to adjust the preliminaries of the trials, cannot but think it strange your Lordships should come to resolutions upon two of those

points, while the proposal of the House of Commons is under debate at Conferences between the two Houses ; the Commons having other difficulties to propose, which concern them as prosecutors, and all future impeachments.

And, though the Commons leave the subject of your Lordships resolutions, with other things, to be debated at a Committee of both Houses ; yet they cannot but observe, that your Lordships second resolution is no direct answer to the Commons proposal ; which was, Whether Peers, impeached of the same crimes, shall vote for each other upon their trial for the same crimes ? And the Commons cannot believe, that any such rule can be laid down, in plain words, where there is a due regard to justice.

And as to what your Lordships observe, That there is a mistake in point of fact, alleged by the Commons ; this House may take off the caution used by your Lordships in wording that part of your message ; for they know, your Lordships are too well acquainted with the truth of the fact to affirm, That the impeached Lords did not vote in their own cases : and, though the appearing or not appearing upon your Lordships' Journal, does not make it more or less agreeable to the rules of justice ; yet the Commons cannot but add this further observation, from your Lordships' Journal, That the impeached Lords presence is not only recorded when those votes passed, but they also find some of them appointed of Committees for preparing and drawing up the messages and answers to the House of Commons : which they do not think has been the best expedient for preserving a good correspondence between the two Houses, or adjusting what will be necessary upon these trials : and therefore the Commons cannot think it agreeable to the rules of Parliament, for them to appear at a trial, till all necessary preliminaries are first settled with your Lordships.

Ordered, That the said answer be sent to the Lords.

Ordered,

Ordered, That Mr. St. John do carry the said answer to the Lords.

Ordered, That the Committee who managed the last Conference, do manage the Free Conference.

And the Managers went to the Conference.

And being returned ;

Mr. Harcourt reported what had happened at the Conference, in a speech of the Lord Haversham ; upon which the Managers thought fit to withdraw from the Conference, to the end they might acquaint the House therewith.

Ordered, That the Managers do withdraw into the Speaker's Chamber, and collect the matter of the Conference ; and what was said by the Lord Haversham ; and report the same to the House.

And the Managers withdrew.

And the House adjourned till the return of the Managers.

The Managers being returned ;

Mr. Harcourt reported the matter of the Free Conference ; and the words which the Lord Haversham had spoke 'thereat ; which he read in his place ; and afterwards delivered in at the Clerk's table : where the same was read ; and is as followeth ; viz.

That the Managers, appointed by this House, met the Lords at a Free Conference ; the subject-matter whereof was opened by Mr. Harcourt, and immediately afterwards, further argued by Sir Bartholomew Shower.

It was insisted on by each of them, That the reasons offered by their Lordships at the last Conference, were not sufficient for their Lordships disagreeing to a Committee of both Houses, desired by the Commons at the first Conference :

That, notwithstanding those reasons, the Commons still thought a Committee of both Houses absolutely necessary for adjusting
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and preventing such differences as had happened, or might arise, previous to, or upon, the trials : and therefore insisted, That such a Committee should be appointed, before the Commons could proceed on any trial.

It was urged, as one reason for such a Committee, That many difficulties might happen, whereby the trials might be obstructed, if the preliminaries should not be first adjusted : as one instance, that point, of several Lords, being under impeachments of the same crimes, voting on each other's trials, was mentioned.

The Lord Steward first replied ; and nothing was offered by his Grace, but what was material and pertinent to the matter in question, and agreeable to the method of Parliament in Free Conferences.

That John Lord Haversham spoke immediately after ; and, in his Lordship's discourse, used these, or the like expressions :

“ One thing there is, though I cannot speak to it, because I am
 “ bound up by the orders of the House ; yet it must have some
 “ answer ; that is, As to the Lords voting in their own case ; it re-
 “ quires an answer ; though I cannot go into the debate of it :
 “ the Commons themselves have made this precedent ; for, in
 “ these impeachments, they have allowed men, guilty of the same
 “ crimes, to vote in their own House : and therefore we have not
 “ made any distinction in our House, that some should vote, and
 “ some not. The Lords have so high an opinion of the justice
 “ of the House of Commons, that, they hope, justice shall never
 “ be made use of as a mask for any design : and therefore give
 “ me leave to say, though I am not to argue it, it is a plain de-
 “ monstration, that the Commons think these Lords innocent :
 “ and, I think, the proposition is undeniable ; for there are
 “ several Lords in the same crimes. In the same facts, there
 “ is no distinction : and the Commons leave some of these
 “ men at the head of affairs, near the King's person, to do
 “ any

“ any mischief, if their persons were inclined to it ; and impeach
“ others, when they are both alike guilty, and concerned in the
“ same facts : This was a thing I was in hopes I should never
“ have heard asserted, when the beginning of it was from the
“ House of Commons.”

These expressions were instantly objected to by Sir Christopher Musgrave ; and the Managers took them to be so great an aspersion on the honour of this House, that they thought themselves obliged, in duty, immediately to withdraw from the Free Conference.

As the Managers were withdrawing, his Grace my Lord Steward spoke to the effect following :

That, he hoped, we would not think that Lord had any authority from the House of Lords to use any such expressions towards the Commons.

Resolved, That John Lord Haverſham hath, at the Free Conference this day, uttered most scandalous reproaches, and false expressions, highly reflecting upon the honour and justice of the House of Commons, and tending to the making a breach in the good correspondence between the Lords and Commons, and to the interrupting the public justice of the nation, by delaying the proceedings on the impeachments.

Resolved, That John Lord Haverſham be charged, before the Lords, for the words spoken by the said Lord this day, at the Free Conference ; and that the Lords be desired to proceed in justice against the said Lord Haverſham ; and to inflict such punishment upon the said Lord, as so high an offence against the House of Commons does deserve.

Ordered, That Sir Christopher Musgrave do carry the said charge and resolution to the Lords.

A message from the Lords, by Dr. Newton and Mr. Gery:—

Mr. Speaker,

The Lords having been informed by their Managers; That some interruption happened at the Free Conference; which their Lordships are concerned at, because they wish that nothing should interrupt the public business; do desire the Commons would come again presently to the said Free Conference; which, they do not doubt, will prove the best expedient to prevent the inconvenience of a misunderstanding upon what has passed.

And then the messengers withdrew.

Resolved, That this House will send an answer by messengers of their own.

And the messengers were called in again; and Mr. Speaker acquainted them therewith.

Sir Christopher Musgrave reported, That he had been at the Lords; and, according to order, delivered the charge and resolution of the House, relating to Lord Haversham.

Sabbati, 14^o die Junii.

A MESSAGE from the Lords, by Sir John Hoskins and Dr. Newton:

Mr. Speaker,

The Lords have commanded us to acquaint this House, That, upon the occasion of their last message yesterday, in order to continue a good correspondence between the two Houses, their Lordships did immediately appoint a Committee to state the matter of the Free Conference, and also to inspect precedents of what has happened of the like nature: and, that the public business may receive no interruption, the time desired by their Lordships for renewing the Free Conference being elapsed, their Lordships desire a present Free Conference, in the Painted Chamber, upon the subject-matter of the last Free Conference.

And

And then the messengers withdrew.

Resolved, That this House will send an answer by messengers of their own.

And the messengers were called in again; and Mr. Speaker acquainted them therewith.

Resolved, That an answer be returned to the Lords, That the Commons are extremely desirous to preserve a good correspondence between the two Houses, and to expedite the trials of the impeached Lords; but do conceive, it is not consistent with the honour of the Commons to renew the Free Conference, until they have received reparation, by their Lordships doing justice upon John Lord Haversham, for the indignity he yesterday offered to the House of Commons.

Ordered, That the * Lord Cheyne do carry the said answer to the Lords.

Martis, 17^o die Junii.

MR. Harcourt reported from the Committee appointed to draw up articles of impeachment, and to whom the messages from the Lords yesterday were referred, and to draw up reasons why they cannot proceed to the trial of the Lord Somers this day; That they had drawn up reasons; which they had directed him to report to the House accordingly; which he read in his place; and afterwards delivered in at the Clerk's table: where the same were twice read; and agreed unto by the House; and are as follows; viz.

The Commons, in this whole proceeding against the impeached Lords, have acted with all imaginable zeal to bring them to a speedy trial; and they doubt not but it will appear, by comparing

* This Lord Cheyne was a Peer of Scotland, created in 1681; of a considerable estate in Buckinghamshire, and whose family were elected for that county, and for

Agmondesham, in several Parliaments between 1660, and the Union of the two kingdoms.

their proceedings with all others upon the like occasion, that the House of Commons have nothing to blame themselves for, but that they have not expressed the resentment their ancestors have justly shewed upon much less attempts, which have been made upon their power of impeachments.

The Commons, on the thirty-first of May, acquainted your Lordships, That they thought it proper, from the nature of the evidence, to proceed, in the first place, upon the trial of the Lord Somers; upon the first intimation from your Lordships, some days afterwards, that you would proceed to the trial of any of the impeached Lords, whom the Commons should be first ready to begin with; notwithstanding your Lordships had before thought fit to appoint which impeachment should be first tried, and affix a day for such trial, without consulting the Commons, who are the prosecutors.

The Commons, determining to expedite the trials to the utmost of their power, in hopes of attaining that end, and for the more speedy and easy adjusting and preventing differences, which had happened, or might arise, previous to, or upon these trials, proposed to your Lordships, at a Conference, the most parliamentary and effectual method for that purpose, and that which in no manner intrenched upon your Lordships judicature, That a Committee of both Houses should be nominated, to consider of the most proper ways and methods of proceedings upon impeachments, according to the usage of Parliament.

In the next message to the Commons, upon Monday the ninth of June, your Lordships thought fit, without taking the least notice of this proposition, to appoint the Friday then following for the trial of the said Lord Somers: whereunto, as well as to many other messages and proceedings of your Lordships upon this occasion, the House of Commons might have justly taken very great exceptions; yet, as an evidence of their moderation, and to shew their readiness to bring the impeached Lords to
speedy

speedy justice, the Commons insisted only on their proposition for a Committee of both Houses, to settle and adjust the necessary preliminaries to the trial; particularly, Whether the impeached Lords should appear, on their trial, at your Lordships Bar, as criminals? Whether, being under accusations, of the same crimes, they should sit as judges on each other's trial for those crimes? Or should vote in their own cases, as, it is notorious, they have been permitted by your Lordships to do in many instances which might be given? To which particulars your Lordships have not yet given a direct answer; though put in mind thereof by the Commons.

Your Lordships, at a Conference, having offered some reasons why you could not agree to a Committee of both Houses, to adjust the necessary preliminaries, the Commons thereupon desired a Free Conference; and your Lordships agreed thereunto: at which, it is well known to many of your Lordships, who were then present, what most scandalous reproaches, and false expressions, highly reflecting upon the honour and justice of the House of Commons, were uttered by John Lord Haverham; whereby the Commons were under the necessity of withdrawing from the said Free Conference: for which offence the Commons have, with all due regard to your Lordships, prayed your Lordships justice against the Lord Haverham; but have, as yet, received no manner of satisfaction.

The Commons restrain themselves from enumerating your Lordships very many irregular and unparliamentary proceedings upon this occasion; but think it is what they owe to public justice, and all the Commons of England, whom they represent, to declare some few of those reasons, why they peremptorily refuse to proceed to the trial of the Lord Somers, on the seventeenth of June.

1st, Because your Lordships have not yet agreed, that a Committee of both Houses should be appointed, for settling the necessary.

sary preliminaries ; a method never, until this time, denied by the House of Lords, whensoever the Commons have thought it necessary to desire the same.

2dly, Should the Commons, which they never will do, be contented to give up those rights which have been transmitted to them from their ancestors, and are of absolute necessity to their proceedings on impeachments ; yet, whilst they have any regard to public justice, they never can appear as prosecutors before your Lordships, till your Lordships have first given them satisfaction, that Lords impeached of the same crimes, shall not sit as Judges on each other's trials for those crimes.

3dly, Because the Commons have, as yet, received no reparation for the great indignity offered to them, at the Free Conference, by the Lord Haversham. The Commons are far from any inclination, and cannot be supposed to be under any necessity, of delaying the trial of the Lord Somers : there is not any article exhibited by them, in maintenance of their impeachment against the Lord Somers, for the proof whereof they have not full and undeniable evidence ; which they will be ready to produce, as soon as your Lordships shall have done justice upon the Lord Haversham, and the necessary preliminaries, in order to the said trial, shall be settled by a Committee of both Houses.

The Commons think it unnecessary to observe to your Lordships, That most of the articles, whereof the Lord Somers stands impeached, will appear to your Lordships to be undoubtedly true, from matters of record, as well as by the confession of the said Lord Somers, in his answer to the said articles : to which the Commons doubt not but your Lordships will have a due regard, when his trial shall regularly proceed.

Resolved, That the said reasons be sent, by a message, to the Lords.

Ordered, That the Earl of Dysert do carry the said message.

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The Earl of Dysert reported to the House, That he had, according to order, carried up their message to the Lords.

Veneris, 20^a die Julii.

A MESSAGE from the Lords, by Sir John Franklyn and Sir Lacon William Child :

Mr. Speaker,

We are commanded by the Lords to acquaint this House, That the Lords have appointed Monday, the three-and-twentieth day of this instant June, at ten of the clock in the forenoon, for the trial of Edward Earl of Orford, in Westminster Hall,—Also,

We are commanded by the Lords to deliver to this House, a copy of the Lord Haverham's answer to the charge exhibited against him.—Also,

We are commanded by the Lords to acquaint this House, That the Lords, in answer to the message of the Commons of the seventeenth instant, say ; The only true way of determining which of the two Houses has acted with the greatest sincerity, in order to bring the impeached Lords to their trials, is, to look back upon the respective proceedings.

The Lords, do not well understand what the Commons mean by that resentment, which they speak of in their message. Their Lordships own the House of Commons have a right of impeaching ; and the Lords have the undoubted power of doing justice upon those impeachments, by bringing them to trial, and condemning or acquitting the parties in a reasonable time : this power is derived to them from their ancestors ; which they will not suffer to be wrested from them by any pretences whatsoever.

Their Lordships cannot but wonder, that the Commons should not have proposed a Committee of both Houses much sooner, if they thought it so necessary for the bringing on the trials ; no mention being made of such a Committee, from the first of April to the

the sixth of June; although, during that interval, their delays were frequently complained of by the House of Lords.

The manner in which the Commons demand this Committee, the Lords look upon as a direct invading of their judicature; and therefore, as there never was a Committee of both Houses yielded to by the Lords, in case of any impeachment for high crimes and misdemeanors, so their Lordships do insist, that they will make no new precedent upon this occasion: many impeachments for misdemeanors have, in all times, been determined without such a Committee; and if now the Commons think fit, by an unprecedented demand, to form an excuse for not prosecuting their impeachments, it is demonstrable where the obstruction lies.

As to the preliminaries, which the Commons mention in particular, as proper to be settled at such a Committee; they have received the resolutions of the House of Lords therein, by their message of the twelfth instant, from which, being matters relating intirely to their judicature, their Lordships cannot depart.

As to the last pretence the Commons would make to shelter the delaying the trials, from some expressions which fell from the Lord Haversham at the Free Conference, at which offence was taken, their Lordships will only observe:

1st, That they have omitted nothing which might give the Commons all reasonable satisfaction, of their purpose to do them justice in that matter, so far as is consistent with doing justice to that Lord; and also to preserve all good correspondence with them, as appears by the several steps they have taken.

2^{dly}, That this business has no relation to the trials of the impeached Lords; and therefore their Lordships cannot imagine, why the Commons should make satisfaction and reparation against the Lord Haversham, a necessary condition for the going on with the trials; and, at the same time find no difficulty in proceeding on other business.

And then the messengers withdrew.

Resolved,

Resolved, In answer to the message of the Lords appointing Monday next for the trial of the Earl of Orford, That the Lords have been acquainted, That the Commons would proceed, in the first place, against the Lord Somers: and they are ready to go to that Lord's trial as soon as ever the Commons have received satisfaction for the affront offered to the House of Commons, by the Lord Haverham, at the Free Conference; and that the necessary preliminaries are adjusted by a Committee of both Houses.

Ordered, That the Lord Mordaunt do carry the said answer to the Lords.

A P P E N D I X, N° 13. (p. 287.)

What passed at Conferences relating to Lord Oxford's Trial.

Jovis, 27^o die Junii, 1717.

MR. Carter reported from the Committee appointed to withdraw, and draw up what was proper to be offered to the Lords at the Conference relating to proceedings in the prosecutions of Impeachments, That they had drawn up the same accordingly; which they had directed him to report to the House; and he read the said report in his place; and afterwards delivered the same in at the Clerk's table: where it was read; and agreed unto by the House; and is as follows; viz.

The Commons, having taken into their consideration your Lordships resolution, communicated to their Managers, relating to the proceedings on the trial of Robert Earl of Oxford and Earl Mortimer; and being desirous, as far as in them lies, to maintain a good correspondence with your Lordships; have desired this Conference; and have commanded us to acquaint your Lordships, That they conceive it to be the undoubted right of the Commons to impeach a Peer, either for High Treason, or for high crimes and misdemeanors; or, if they see occasion, to mix both the one and the other in the same accusation.

The impeachment preferred against Robert Earl of Oxford and Earl Mortimer is one continued accusation, consisting of high crimes and misdemeanors, and also of charges of High Treason: the facts on which the articles preceding those of High Treason are grounded, are laid together in order of time, and follow one another successively in the manner they were committed.

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As the Commons thought this the most natural method for exhibiting the several articles against the said Earl, they were of opinion, that they should proceed in the proof of these several facts after the same method; since it is manifest, that, in laying open the course of such a wicked administration, the preceding parts of it give light to those which follow; and that the proof of several of the articles of high crimes and misdemeanors would naturally lead to the proof of those of High Treason.

Your Lordships received these several articles of impeachment without making any exception against the form in which they were exhibited: the said Earl made his answer to them in the same order; and has nowhere insisted to be tried, in any other method; so that the Commons are surprised to find a stop put to their prosecution, by an objection which has never been stated by the said Earl, and which your Lordships had given them so little reason to expect.

To this must be added, That, as the Commons only are masters of the evidence; and as, upon that account, they are best able to determine what to charge first, and what next; so they are most proper to determine in what method to proceed for the advantage of the prosecution; in the event of which, all the Commons of Great Britain are so highly concerned: to which they further add, That they see no reason but that your Lordships may as well invert the whole order of the articles, as prescribe to the Commons those particular articles on which they are first to proceed: which will necessarily produce such a confusion, both in the facts and evidence, as is by no means consistent with that clearness and perspicuity in which the Commons think this affair ought to appear.

The Commons, upon examining precedents, do find divers precedents of impeachments for High Treason, and other high crimes and misdemeanors, in the same accusation; and do not

find, that the Lords ever objected to such proceeding, or ever gave judgment upon any particular article of an impeachment, before the Commons had gone through and concluded their evidence upon all the articles, or so many of them as they thought fit : and the Commons are as much at a loss to conceive what arguments, or precedents, can be brought to support the resolution of your Lordships to give judgment upon one part of the same accusation, reserving the other part for a subsequent trial ; as they are to know what your Lordships mean, by admitting the Commons to proceed upon the articles of high crimes and misdemeanors, after the judgment is given upon the articles for High Treason, supposing the judgment proper for High Treason should be given against the said Earl.

For these reasons, the Commons assert it as their undoubted right to proceed on the trial of Robert Earl of Oxford and Earl Mortimer after the method in which their Managers were proceeding, when interrupted by your Lordships resolution.

Ordered, That the Lord Morpeth do go to the Lords, and desire the said Conference.

The Lord Morpeth reported, That he having, according to order, been at the Lords, to desire a Conference, the Lords do agree to a Conference ; and appoint the same presently, in the Painted Chamber.

Ordered, That the Committee appointed to draw up what was proper to be offered to the Lords at a Conference, relating to proceedings in the prosecutions of impeachments, do manage the said Conference.

And the Managers went to the Conference.

And being returned ;

Mr. Carter reported, That the Managers had been at the Conference, and delivered to the Lords what the House had directed.

Veneris.

Veneris, 28^o die Junii.

A MESSAGE from the Lords, by Mr. Fellows and Mr. Meller :

Mr. Speaker,

The Lords desire a present Conference with this House, in the Painted Chamber, upon the subject-matter of the last Conference.

And then the messengers withdrew.

Resolved, That the House doth agree to a present Conference with the Lords, as their Lordships desire.

And the messengers were called in again ; and Mr. Speaker acquainted them therewith.

Ordered, That the Committee who managed the last Conference, do manage this Conference.

The Managers went to the Conference.

And being returned ;

Mr. Carter reported, That the Managers appointed to manage the Conference with the Lords had been at the Conference ; and that the same was managed, on the part of the Lords, by the Duke of Newcastle ; who acquainted the Managers, That their Lordships, in order to preserve a good correspondence with the House of Commons, which they shall always endeavour to do as far as lies in their power, have desired this Conference, upon the subject-matter of the last Conference ; and have directed us to acquaint you, That their Lordships judge it a right inherent in every court of justice, to order and direct such methods of proceeding as such Court shall think fit to be observed in all causes depending before them, which can have no influence to the prejudice of justice, and where such methods of proceedings are not otherwise settled by any positive rule : the power of judicature on all impeachments being a right unquestionably inherent in their Lordships ;

Lordships; and it not being determined by any positive rule, whether the House of Commons may proceed to make good the several articles exhibited for misdemeanors in such order as they shall think fit, before they proceed to make good the articles exhibited for High Treason; and there being no precedent where the Commons, upon the trial of any such impeachment, attempted to proceed, in the first place, to make good any of the articles contained in such impeachment for high crimes and misdemeanors; their Lordships (considering the nature of the impeachment now depending before them, and the method wherein the Managers for the House of Commons were beginning to proceed upon the trial, to make good the first article thereof, which is a charge for high crimes and misdemeanors only; and also considering the very different methods of proceedings on an impeachment of a Peer for High Treason, as well before as upon the trial thereof, and the circumstances attending such a trial, from the proceedings on an impeachment of a Peer for high crimes and misdemeanors, and the known circumstances attending such a trial) thought themselves obliged to come to the resolution, communicated to the Commons on the 24th instant, as well for the doing justice in the case depending before them, as for the preventing a new precedent to be made on this trial; in consequence whereof, a new and unjustifiable form of proceeding against a Peer, upon an impeachment for High Treason, and high crimes, might be introduced, at his trial, upon those articles in which he is charged for high crimes and misdemeanors only; to the prejudice of the Peerage of Great Britain in all times to come; viz. the trying a Peer on articles for high crimes and misdemeanors without the Bar: the detaining in custody a Peer so accused; and repeated commitments of him to the Tower, during the time of such trial; and subjecting a Peer to as ignominious circumstances on his trial on articles for misdemeanors, as if he were then on his trial on articles for High Treason: whereas

a Peer, on his trial on articles for misdemeanors only, ought not to be deprived of his liberty, nor sequestered from Parliament; and is intitled to the privilege of sitting within the Bar during the whole time of his trial: in all which particulars, the known rule of proceedings in such cases may be evaded, should a Peer be brought to his trial on several articles exhibited against him for high crimes and misdemeanors, and for High Treason, mixed together; and the Commons be admitted to proceed, in order to make good the articles for high crimes and misdemeanors, before judgment be given upon the articles for High Treason. Their Lordships have fully considered the matters offered to them by the House of Commons at the last Conference, relating to the proceedings against Robert Earl of Oxford and Earl Mortimer; and their Lordships are fully satisfied, that the resolution they have taken, and communicated to the Commons on the 24th instant, is just and reasonable; and that the House of Commons are not put under any real inconvenience thereby, in carrying on their present prosecution: Their Lordships have commanded us to let you know, that they do insist on their said resolution; viz. "That the Commons be not admitted to proceed, in order to make good the articles against Robert Earl of Oxford and Earl Mortimer for high crimes and misdemeanors, till judgment be first given on the articles for High Treason."

A P P E N D I X, N° 14. (p. 308.)

Report, from a Committee, of certain Heads upon which Persons might be excepted out of the Bill of Indemnity.

Jovis, 23^a die Januarii, 1689.

THE House resolved into a Committee of the whole House, upon the Bill of Indemnity; and Bill of Pains and Penalties to be inflicted upon such as shall be excepted out of the Bill of Indemnity.

Mr. Speaker left the Chair.

Mr. Gray took the Chair of the Committee.

Mr. Speaker resumed the Chair.

Mr. Gray reports from the Committee of the whole House, That they had agreed upon certain heads in order to their proceedings on the said Bills: which he read in his place; and afterwards delivered the same in at the Clerk's table: where they were read; and are as follow; viz.

Resolved, That it is the opinion of this Committee, That the asserting, advising, and promoting of the dispensing power; and suspending of laws without consent of Parliament*, as it hath

* Upon this subject of the dispensing power, see what passed on the trial of Sir Edward Hales in 1686; the arguments of his Counsel, and the opinion of eleven Judges out of twelve (Mr. Justice Strutt only dissenting) "That the King had by law, a power to dispense with the execution of the stat. 25 Chs. II. ch. 2d. which requires all persons holding an office of trust to receive the sacrament, and to take the oaths of allegiance and supremacy." State

Trials, Vol. VII. page 612. Sir Edward Herbert, Chief Justice of the Common Pleas, afterwards published an account of the Authorities in Law, upon which he formed his opinion in that case—which account, together with the arguments of Sir Robert Atkins, and Mr. William Atwood, against that judgment, are to be found in the same volume of the State Trials, page 616—623,—and comprehend all that is to be said on both sides of this question.

been lately exercised; and the acting in pursuance of such pretended dispensing power, is one of the crimes, for which some persons may justly be excepted out of the Bill of Indemnity.

Resolved, That it is the opinion of this Committee, That the commitment and prosecution of the seven Bishops, be another crime, for which some persons may justly be excepted out of the Bill of Indemnity.

Resolved, That it is the opinion of this Committee, That the advising, promoting and executing the commission for erecting the late court for ecclesiastical causes, be another crime, for which some persons may justly be excepted out of the Bill of Indemnity.

Resolved, That it is the opinion of this Committee, That the advising the levying money, and the collecting the same for and to the use of the Crown, by pretence of prerogative, for other time, and in other manner, than the same was granted by Parliament, be another crime, for which some persons may justly be excepted out of the Bill of Indemnity.

Resolved, That it is the opinion of this Committee, That the advising the raising and keeping up a standing army in the time of peace, without consent of Parliament, and the quartering of soldiers, be another crime, for which some persons may justly be excepted out of the Bill of Indemnity.

Resolved, That it is the opinion of this Committee, That the advising, procuring, contriving, and acting in the surrendering charters, and in the alteration and subversion of corporations, and in procuring of new charters; and the violating of the rights and freedoms of elections to Parliament, in counties, cities, corporations, boroughs, and ports; and the questioning the proceedings of Parliament, out of Parliament, by declarations, informations, or otherwise, are other crimes,

for which some persons may be justly excepted out of the Bill of Indemnity.

Resolved, That it is the opinion of this Committee, That undue constructions of law, and illegal prosecutions and proceedings in capital cases, are other crimes, for which some persons may justly be excepted out of the Bill of Indemnity.

Resolved, That it is the opinion of this Committee, That the undue returns of juries, and other illegal proceedings in civil causes, are other crimes, for which some persons may justly be excepted out of the Bill of Indemnity.

Resolved, That it is the opinion of this Committee, That the requiring excessive bail, imposing excessive fines, giving excessive damages, and using undue means for levying such fines and damages, and inflicting cruel and unusual punishments, are other crimes, for which some persons may justly be excepted out of the Bill of Indemnity.

Resolved, That it is the opinion of this Committee, That the advising King Charles the Second, and King James the Second, by some of their Judges and Council, that Parliaments need not be called, according to the statutes, is another crime, for which some persons may justly be excepted out of the Bill of Indemnity.

Resolved, That it is the opinion of this Committee, That the procuring the commission to execute martial law in the Island of Sancta Helena, or signing instructions for putting the same in execution, is another crime, for which some persons may justly be excepted out of the Bill of Indemnity.

Resolved, That it is the opinion of this Committee, That the regulating of corporations and boroughs in the reign of the late King James the Second, and the promising to take off the penal laws and test, are other crimes, for which some persons may justly be excepted out of the Bill of Indemnity.

Resolved,

Resolved, That it is the opinion of this Committee, That the undertaking, in the reign of the late King James the Second, to repair the ships of war, and receiving money for that service, and the not performing the same, is another crime, for which some persons may justly be excepted out of the Bill of Indemnity.

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